

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

SANTA ROSA CITY SCHOOLS.

OAH Case No. 2018020255

DECISION

On February 6, 2018, Student filed with the Office of Administrative Hearings a request for due process naming Santa Rosa City Schools. Administrative Law Judge Theresa Ravandi heard this matter in Santa Rosa, California, on April 3, 4, 5, 17, 18 and 19, 2018.

Laurene B. Bresnick, Attorney at Law, represented Parents and Student. Both Parents were present the first day of hearing in the morning, and Father attended that afternoon.

Parents attended the second day of hearing, with Mother appearing the third day of hearing. Thereafter, both Parents were present for the remainder of the hearing.

Jennifer E. Nix, Attorney at Law, represented Santa Rosa. Sonya Randrup, Santa Rosa's Coordinator of Special Services, attended the first week of hearing as Santa Rosa's representative. Program Manager Janel Plack appeared as Santa Rosa's representative for the remainder of the hearing.

At the conclusion of the hearing, the matter was continued at the parties' request to May 14, 2018, to afford them an opportunity to file written closing briefs. The record closed with the parties' timely submission of closing briefs and the matter was submitted.

ISSUES

Issue 1: Did Santa Rosa deny Student a free appropriate public education from January 26, 2017, by failing to timely and adequately assess him in all areas of suspected disability, specifically, emotional disturbance, and find him eligible for special education services under the eligibility category of emotional disturbance?

Issue 2: Did Santa Rosa deny Student a FAPE by failing to provide Parents with prior written notice in response to Parents' request for residential placement on September 14, 2017?

Issue 3: Did Santa Rosa deny Student a FAPE in his April 4, 2017 individualized education program, including IEP addendums dated September 22, 2017; November 1, 2017; January 12, 2018; and January 22, 2018, by:

- a. failing to address Student's emotional disturbance that was preventing his ability to access his education and make educational progress;
- b. failing to offer a placement and services that provided Student with diploma-track curriculum; and
- c. failing to offer placement and services that would meet Student's needs for on-site therapeutic mental health staff in a residential setting?

SUMMARY OF DECISION

This case is about a complex young man who is eligible for special education as a student with both autism and an emotional disturbance. The crux of this case is whether Santa Rosa timely and appropriately identified Student's emotional and mental health needs and provided appropriate services and placement to address these needs. Santa Rosa's exclusive focus on behavior management came at the cost of identifying and addressing all of Student's disability-related educational needs. This Decision finds that Santa Rosa did not timely or adequately assess Student's emotional disturbance or identify his related mental health needs, thus denying him a FAPE. Santa Rosa's April 2017

IEP offer, and subsequent addendums, were inadequate to address his mental health needs, and deprived him of the opportunity to access an appropriately ambitious, diploma-track curriculum.

This Decision further finds that Student met his burden of proof that he requires placement in a residential treatment center in order to access and benefit from his education. Having found that Santa Rosa substantively denied Student a FAPE by failing to provide him an appropriate placement, this Decision does not determine whether there was an additional procedural violation in failing to provide prior written notice in response to Parents' request for residential placement. Student did not establish a separate denial of FAPE based on Santa Rosa's delay in finding him eligible under the category of emotional disturbance.

FACTUAL FINDINGS

JURISDICTION

1. Student is a bright and capable, soon to be 19-year-old young man. He resided with Parents and two younger sisters within Santa Rosa's jurisdictional boundaries during the relevant statutory period through the time of hearing. Effective June 7, 2017, Parents serve as Student's conservators pursuant to a limited conservatorship issued by the Superior Court of California, County of Sonoma. They are dedicated to Student and involved in and supportive of his education.

2. When he was four years old, Student first became eligible for special education as a student with autism. As of January 2018, Santa Rosa determined that Student was also eligible as a student with an emotional disturbance following an

assessment by its expert Dr. Pamela Mills.¹ Student is in his third year of attendance at Lattice Educational Services, a non-public school for students with extreme behaviors or who require constant supervision due to intellectual delays or sensory needs. Santa Rosa placed Student at Lattice during the extended school year in June 2015, just prior to his tenth grade year of high school. Student has continuously attended Lattice since that time and is nearing the end of his fourth year of high school.

EARLY YEARS AND ELEMENTARY SCHOOL

3. Student is Parents' first child. They learned that he had autism when he was three years old. Beginning June 2003, Student received early intervention services, including behavior services, through his local school district and the North Bay Regional Center.² Mother was determined to learn all she could to help Student develop to his fullest potential. She ordered books and videos about autism, accessed on-line trainings, and hired a therapist to teach her how to teach Student using the techniques of applied behavior analysis. He flourished and was speaking in sentences by the age of five.

4. Student attended a mainstream general education classroom with typically

¹ Dr. Mills is licensed as a clinical psychologist and an educational psychologist. She previously worked for San Francisco Unified School District as a school psychologist and program administrator for more than 18 years. She has been in private practice for the past several years conducting student assessments for districts and parents. Over her 50 years of experience in the education field, she has conducted more than 10,000 student assessments.

² Regional Centers operate under the authority of the Lanterman Developmental Disabilities Act (Welf. & Inst. Code, § 4500 et seq.), and provide services and supports to persons with developmental disabilities such as autism.

developing peers from kindergarten through fifth grade with the provision of a one-to-one aide. He had no trouble accessing the general education curriculum, and advanced with his peers from grade to grade. He was happy, enjoyed participating in school plays and choir, and had friends.

MIDDLE SCHOOL YEARS

5. Student attended sixth through eighth grade at Willowside Middle School and participated in general education classes with the exception of language arts. He attended Collen Cavallo's resource specialist language arts class for all three years due to his autism-related difficulties with verbal language and reading comprehension.³ He continued to receive the support of a full inclusion aide. Student made a smooth transition to middle school. He became more independent, met his IEP goals, kept up with the general education curriculum, and made the honor roll. Student was performing overall at grade level with some struggles in inferential thinking and comprehension. He showed his artistic talent in the many movie clips he made. Student required structured social activities and aide assistance to facilitate social interactions.

6. For Student's triennial reassessment in seventh grade, Ms. Cavallo administered the Woodcock-Johnson III Tests of Achievement, Normative Update, in February 2013. Student scored in the average range on all academic clusters with the exception of his below average score in the area of oral language. Cognitive test measures showed Student's full scale intelligence quotient to be in the low average range with a standard score of 88. In spring 2013, Student's academic performance was commensurate with his cognitive ability.

7. During eighth grade, Student displayed emerging emotional struggles at

³ Ms. Cavallo is a fully credentialed special education teacher. She has been a resource specialist teacher for the past 16 years. Ms. Cavallo testified at hearing.

school and home. He was no longer interested in making movies; obsessed about being perfect; appeared tired and sad; and expressed suicidal ideation at school. Pursuant to his IEP, Student attended an after-school social cognition group at Anova, a non-public school for high-functioning students with autism. This service addressed conversational skills, problem-solving, and perspective taking. At the time of his annual IEP on April 17, 2014, Student had made significant academic gains and was performing at grade level in math, science, spelling, and reading fluency, but continued to struggle with comprehension and inferential thinking. He was able to write essays with the support of graphic organizers.

8. In summer 2014, prior to his entry to high school, Student's sadness and withdrawal intensified, and he told Father he wanted to die. He was emotionally dysregulated and would awake in the middle of the night screaming. Parents consulted his pediatrician and insisted on a referral to an autism clinic at Kaiser Psychiatry in San Francisco. They scheduled an appointment for the soonest available slot, December 2014.

EL MOLINO HIGH SCHOOL

9. Despite a difficult summer, Student smoothly transitioned to ninth grade, attending El Molino in the West Sonoma County Union High School District on an inter-district transfer. Student received aide support and participated in general education classes with a resource specialist class for English and Directed Studies. He appeared happy, volunteered to lead in Film class, and gave a presentation in English. He completed his assignments and was earning A's and B's. Within a few weeks, Student began to engage in negative self-talk, saw himself as falling short of his high self-expectations, and was emotionally and behaviorally dysregulated at home. North Bay provided counseling services for his school anxiety.

Rapid decline in functioning

10. As ninth grade progressed, Student's school functioning deteriorated. In approximately September 2014, Student expressed suicidal ideation at school. He displayed emotional outbursts and would hit himself on the head with one or two quick blows. His teachers saw him struggle with obsessive thoughts, and he would apologize for things that had not happened. For the first time, Student began to talk about and to many different imaginary characters. One was "Eye Patch Man." Eye Patch Man convinced Student that he could never succeed and would always be wrong. In October 2014, Parents informed his IEP team that Student spent hours trying to complete his homework and required constant prompting. Parents also informed the team that Student was receiving twice weekly counseling to curb his obsessive thoughts.

11. In December 2014, Dr. Rechtin at Kaiser's Autism Clinic diagnosed Student with severe depression. Student was prescribed a variety of anti-depressant and anti-psychotic medications including Zoloft and Risperidone, but these were discontinued due to his violent outbursts and property destruction. Father vividly and emotionally testified about the first time he had to restrain Student. It was New Year's Day 2015. Student was screaming at imaginary people who were not present to leave him alone. He repeatedly struck the side of his head with his hands, over his ears. Father told him that the people and voices he heard were not real and that he was okay. Student would respond in a normal voice, "Okay, Dad." Then, he would return to yelling at the imaginary people and hitting himself. Father held Student's arms while Student lay kicking. Student's psychiatrist stopped all medications.

12. Thereafter, and continuing to the time of hearing, Student has had incidents of self-injurious behaviors, ranging in intensity and frequency from several episodes per day on a high behavior cycle, to one or two a week during a low behavior cycle. Student's self-injurious behavior often is preceded by a negative dialogue he has with himself, "Stop that right now! Okay, I will." Other times he screams that the voices are telling him

he has to hit himself. Student typically begins by hitting his ears and the sides of his head with an open palm, hard enough to cause an audible sound and result in immediate redness. He quickly escalates to striking his head and face with his closed fist, resulting in swelling, bruising, and at times bleeding. These incidents occur at home and at school.

West Sonoma's January 2015 School Assessment

13. A school psychologist with West Sonoma completed an assessment of Student's social-emotional functioning and recorded her results in a January 12, 2015 report.⁴ The report records the evaluator's observation of Student ripping up an assignment based on comments he heard in his head made by an upset army chief, and slapping himself without a known antecedent. On behavior rating scales, three teachers and Mother all reported concerns with Student's signs of anxiety, depression, atypical behaviors, and withdrawal.

14. The evaluator opined that Student's self-injurious behaviors were a form of self-punishment for wrongs he had committed, real or imagined. The assessment report concluded that Student's increasing depression and significant emotional symptoms were interfering with his educational progress, and recommended adding emotional disturbance as a secondary eligibility category. Student's IEP was not amended to include this designation.

January 2015 North Bay Psychiatric Assessment

15. In January 2015, Student refused to return to school following the winter recess, so West Sonoma placed him on an independent study program. His emotional

⁴ This report was admitted into evidence as administrative hearsay. While not sufficient in itself to support a factual finding, it may be used to supplement or explain other evidence. (See Cal. Code Regs., tit. 5, § 3082, subd. (b).)

and behavioral dysregulation would escalate when Parents tried to encourage him to attend school. He would hit himself and asked Father to help him to stop. Student began cognitive behavioral therapy at Kaiser in January 2015, and seemed to benefit at times. Parents also sought a second opinion from Dr. Susan Goldwasser, psychiatric consultant to North Bay, given Student's negative reactions to medications. Dr. Goldwasser evaluated him on January 26, 2015, and her report was admitted into evidence as administrative hearsay. During her assessment, Student was anxious, frequently made negative self-comments, inconsistently responded, and talked about Eye Patch Man. Student reported a desire to return to school but shared he was overwhelmed by the work.

16. Dr. Goldwasser prescribed Seroquel, a mood stabilizer, to address self-injurious behavior, anxiety, and sleep disturbance. She recommended a desensitization plan with gradual return to a modified school program, with the support of continued cognitive behavioral therapy to address cognitive distortions and negative self-talk. She also recommended multi-disciplinary programming focused on socialization, communication, and cognitive skills in addition to speech and behavior services.

TRANSFER TO ANOVA

17. Student never returned to El Molino following winter break 2014. In March 2015, West Sonoma placed Student at Anova because it specialized in serving high-functioning students with autism and behavioral challenges. Academically, Student was able to solve algebra problems and read and comprehend ninth-grade text. However, he required one-to-one behavioral assistance for his own safety and to redirect him from his internally-based distraction. Student would hit and scratch his face and neck, and bite his arms. As recorded in the May 12, 2015 IEP team meeting notes, Student's school counselor informed the IEP team that Student appeared to be fighting to maintain control over an internal process that was overwhelming him. West Sonoma increased his counseling services to twice weekly. Anova expressed concern as to its ability to serve

Student given his mental health condition that prevented him from accessing its behavioral component.

18. In May 2015, Student's psychiatrist Dr. Jaspar Hollingsworth informed Parents that Student's internal dialogues with voices in his head appeared to be associated with his anxiety and autism diagnoses. Dr. Hollingsworth did not diagnose Student as having schizophrenia.

SANTA ROSA CITY SCHOOLS' OFFER OF PLACEMENT AT LATTICE

19. By June 2015, Student's district of residence, Santa Rosa, assumed responsibility for Student's special education needs. On June 2, 2015, Santa Rosa convened an IEP team meeting to discuss a possible placement change and complete Student's annual IEP. Anova staff attended, as well as the Director of Student Services of Lattice, Jennifer Ingels.⁵ Student's new medication regimen had not been effective, and Anova was unable to meet Student's needs given his emotional dysregulation.

20. Santa Rosa offered placement at Lattice, effective June 16, 2015, during the extended school year. Lattice is a non-public school that specializes in providing a functional life skills program to students, from preschool to age 22, with autism or intellectual disabilities and severe behavioral challenges, or who require constant supervision. Lattice does not accept students who require a diploma-track program. They do not have qualified staff to deliver that level of academic instruction, and are not certified by the California Department of Education to provide traditional academic programming. At hearing, Student's current teacher Emily Gogas acknowledged that she was not qualified to teach high school curriculum content to Student. Student's reading

⁵ Ms. Ingels became a board certified behavior analyst in 2012, and is a licensed speech language pathologist. She has worked at Lattice since 2008, serving as the Director

and comprehension abilities exceeded those of the other students at Lattice.

21. The IEP team agreed that it was important for Student to participate in Lattice's after school Group Behavior Management Program to ensure greater consistency in behavioral approach to effectuate behavioral change. All Lattice staff are certified in Professional Assault Crisis Training (ProAct), meaning they are trained in de-escalation techniques and to safely restrain students when their behavior threatens imminent harm to themselves or others. Ms. Ingels established that if a student is not able to be successfully maintained at Lattice, there are few if any alternatives; most non-public schools will not accept them if they cannot be maintained at Lattice. Lattice does not provide mental health services. At the time of hearing, Student was the only student with an emotional disturbance at Lattice.

22. At the June 2015 IEP meeting, Student's IEP team determined that Lattice was able to provide all of Student's related services with the exception of his mental health counseling. The IEP team, which did not include Student's counselor, decided that Student was not able to access counseling. North Bay's crisis behavior support staff was present and highlighted that Student was very anxious and internalized his anxiety for long periods of time. Santa Rosa did not offer to assess Student's mental health needs and removed counseling services from his IEP. Santa Rosa reduced Student's weekly minutes of specialized academic instruction (from 360 minutes per day to 315 minutes) to match Lattice's school day. Student's IEP team agreed that once Student's medications and behavior stabilized they would consider a return to Anova. Believing Lattice to be a temporary solution, Parents consented to this IEP amendment which made no change to Student's diploma-track plan. Parents agreed to have Student attend Lattice's after-school program which North Bay funded.

STUDENT'S TENTH GRADE YEAR, 2015-2016

23. Santa Rosa convened an IEP team meeting for Student for a 30-day

placement review on August 26, 2015. Student's reported present levels of academic and functional performance were far below his abilities. Student could not participate in community outings due to safety concerns related to this behavior, so he practiced walking laps with staff on the blacktop. Lattice had Student sort objects by shape and color, wipe and set the table, and fold laundry. Student's academic functioning had regressed. He was able to perform simple math, read at a seventh grade level, and write one complete sentence with multiple prompts. Santa Rosa changed Student's graduation plan to a certificate of completion. The team agreed that once Student was able to maintain emotional and behavioral stability, his academic skills would be reassessed. Student was offered two language goals, three behavior goals, and one seventh grade reading goal.

24. Student demonstrated a variety of behaviors that did not show clear or consistent antecedents. He would scream and cry, and hit himself in the face and head repeatedly with an open hand or closed fists. These behavior outbursts lasted from 30 minutes to two hours, and continued to the time of hearing, though with less frequency. During his self-injurious incidents, staff response protocol included attempting to engage Student and redirect him to task; prompting him to a safe spot; attempting to mitigate his injuries by blocking his blows with their hands; moving out of his reach to prevent him from grabbing, squeezing, scratching, and biting them; and, as a last resort, placing him in a full supine or prone restraint on the floor. These protocols remained in effect at the time of hearing.

25. Based on the principals of ProAct, a restraint was only utilized if it could be done in a safe manner and only if the individuals restraining the student met the ratios of being twice the weight and height of the student. If these ratios were met, then a two-person restraint was possible. Generally, Student required three to four trained adults to restrain him at Lattice. Parents were not ProAct trained. Because Student demonstrated the same self-injurious behaviors at home, they taught themselves how to hold Student

to prevent him from hurting himself. Over the years, Parents had received behavior intervention training from North Bay, Anova, and Kaiser. Father persuasively testified that most behavior techniques worked initially until Student's mental health symptoms "broke through."

26. Alex Goitein is a board certified behavior analyst who has been working with Student since he arrived at Lattice.⁶ Mr. Goitein developed Student's many behavior intervention plans. Beginning June 2017, he trained Cory Lucas, a part-time behavior specialist, on Student's needs and presentation, and the two shared responsibility for Student's behavioral needs during the 2017-2018 school year.⁷ Mr. Goitein first hypothesized that the function of Student's self-injurious behaviors was to meet his need for sensory stimulation. As such, his initial behavior plan in August 2015 focused on implementing sensory strategies.

Restraints and Behavior Emergency Reports

27. Student harmed himself and Lattice staff at school and at the after-school

⁶ Mr. Goitein became certified as a behavior analyst in 2014 and is newly licensed as a clinical social worker this year. He has worked at Lattice for a total of six years, first as an aide then as a behavior specialist. Since August 2017 he has worked part time at Lattice and as a behavior specialist at a local school district. He has six years of experience working in behavioral programs.

⁷ Mr. Lucas obtained a master's in school psychology in 2015 and is a credentialed school psychologist. He is working on his doctoral degree in educational psychology. Mr. Lucas began working at Lattice in June 2015. In addition to being a part-time behavior specialist, he is also the Director of Support Services. He is not a board certified behavior analyst.

program, and was frequently restrained. He often came home from school with a swollen, bloodied face, and bruises on his face and body. Sometimes Lattice sent separate incident reports home to document injuries, but over time, these were only generated when his injuries resulted from atypical behaviors. Lattice was required to complete a behavior emergency report only when it placed Student in a full restraint. Santa Rosa and Parents were notified of a restraint the day it occurred, and Lattice completed the report within 24 hours and provided a copy to Santa Rosa. It was Lattice's practice to send behavior emergency reports to Parents, though it was not contractually required to do so. Sometimes Parents did not receive a copy. For instance, Father had to request a copy of Lattice's March 28, 2018 behavior emergency report. The after-school program prepared emergency intervention reports when their staff restrained Student and incident reports documenting injuries. Santa Rosa did not receive copies. The after-school program typically sent its reports to Parents though it was not contractually required to do so.

28. Concerned that Parents may be reinforcing Student's self-injurious behaviors through their home restraints, Lattice suggested that Parents stop restraining Student and allow him to hit himself in an attempt to extinguish his behaviors. Parents implemented this recommended approach over the winter break in December 2015. During an incident of self-injury, Student became upset that Father was not helping him to stop. Student attacked Father, grabbing his head and twisting his neck, leaving marks. While this was one of the worst incidents of aggression at home to that date, there were many instances where Student would grab Mother and squeeze her arms and legs leaving her bruised.

29. Parents knew Student's mental health had deteriorated. He would scream at himself, "Be happy!" Then he would think he was bad because he was not happy, and punish himself by striking his face and head. Student spoke to and about many characters he invented, and the voices he heard in his head adversely affected his emotional state. When his anxiety was high, his obsessive compulsive rituals took over, such as walking in

and out of a room or around a pole in a particular direction, and interrupted his daily activities at home and school.

April 5, 2016 Annual Iep

30. At the time of his April 5, 2016 annual IEP team meeting, Student was frequently unresponsive, internally pre-occupied, and required multiple prompts for each 20- minute work period. Parents reminded the team that if Student received the help he needed to address his behaviors, he would be able to demonstrate his academic ability. Student's initial behavior plan had not been successful. Mr. Goitein presented a new behavior intervention plan utilizing cognitive behavioral techniques to target Student's repetitive behaviors, help him re-think his need for control, and challenge his negative, distorted thoughts. This plan called for Student to self-monitor his behaviors.

31. Santa Rosa proposed six new goals. A figurative language goal required Student to demonstrate knowledge of 36 idioms. A social skills goal called for him to interpret a problem from two or more perspectives and offer two logical solutions. His behavior goals called for him to stay on task 80 percent of a 20-minute period and to use a self-monitoring system to record his actions when prompted to task or to take a break. A reading goal required Student to read and demonstrate understanding of an eighth grade passage. Student's walking goal called for him to walk three laps in a fenced area with continuous reinforcement and with staff intermittently releasing his arm.

32. The April 2016 IEP continued to offer 315 minutes daily of specialized academic instruction; 80 monthly minutes of occupational therapy; 60 weekly minutes of speech services; 60 monthly minutes of vocational services; and extended school year services. Student remained on a certificate of completion track. Parents signed consent.

OUT-OF-HOME PLACEMENT AT TURNING POINT

33. Parents were no longer able to keep Student or themselves safe, despite

private in-home behavior and counseling services from Kaiser and North Bay. Unaware that they could request a residential placement through the IEP process, Parents asked North Bay to find a residential placement for Student to keep him safe and get him the help he needed. In April 2016, North Bay funded Student's placement at Turning Point, a licensed children's institution in Ukiah. Ukiah Unified School District became responsible for offering and providing Student a FAPE. While Santa Rosa is within the Sonoma County Special Education Local Plan Area, Ukiah is a member of the Mendocino County SELPA.⁸ Student continued to attend Lattice and its afterschool program.

Ukiah's Psycho-Educational Assessment

34. Student was due for a triennial reassessment in spring 2016. Ukiah conducted a limited assessment consisting of a records review, interviews, and one-time class observation and recorded the results in an assessment report dated July 8, 2016. This report was also admitted into evidence as administrative hearsay. The Ukiah assessor observed Student at Lattice stationed by himself in a separate room. During the observation, Student talked about "Mr. Tim" being in his head and telling him thousands of lives were in danger. From a review of Student's education records, the assessor noted that Student's treating psychiatrist had interpreted these voices to be Student's way of expressing his emotions through characters of his own invention, and had ascribed this behavior to his autism, rather than schizophrenia. At hearing, Student witnesses confirmed that in May 2015, Student's psychiatrist Dr. Hollingsworth opined that Student's symptoms appeared to be more representative of anxiety and his obsessive compulsive disorder, than schizophrenia. As of the time of hearing, Student continued to

⁸ Official notice is taken of the fact that Ukiah is part of the Mendocino County SELPA. See <http://www.mcoe.us/District/1176-Mendocino-County-School-Districts.html>.

talk about and to people who were not real on a weekly basis, sometimes several times a day.

35. Ukiah's evaluation identified four areas of need: hallucinations and negative self-talk; processing speed; reading comprehension; and math reasoning. Ukiah's assessment report identified that Student's most pressing need was to curtail the voices in his head. The assessor recommended cognitive-behavioral techniques by an experienced professional to counter Student's negative self-talk and to offer coping strategies to deal with the voices which gave Student distressing messages. Use of competing distraction such as having Student read aloud or converse was also suggested to curtail the voices.

SANTA ROSA RESUMES RESPONSIBILITY FOR STUDENT'S EDUCATION

Return Home In January 2017

36. Student continued to exhibit self-injurious behaviors at Turning Point, but he slowly acclimated. Parents brought him his computer programming recording equipment that he used in middle school to make film clips. Student's creativity resurfaced, and he began to make and record songs. As he stabilized, he came home for overnight visits, eventually spending Thursdays through Sundays and holidays with Parents. During these visits, Student's behaviors were in check. Student and his family went to the movies, on hikes, and cooked dinner together. Parents implemented a behavior reinforcement chart at home, whereby Student could earn favored outings. Given his emotional and behavioral regulation, Student returned home in January 2017. As of January 24, 2017, Lattice was providing Santa Rosa with Student's behavior emergency reports. No later than January 24, 2017, Santa Rosa again became responsible for offering and providing Student a FAPE.

37. Student continued to attend Lattice and the after-school program, now funded by Kaiser. In January 2017, Ms. Gogas, who had been an aide in Student's class

beginning August 2016, became his teacher.⁹ Student was still attending her class for 14 to 18-year-old students at the time of hearing. Lattice also has two transition classes for students from 18 to 22 years of age. When Student turned 18 years old in June 2017, Lattice decided not to move him into the class for older students given the relationships he had formed with his teacher and some of the aides. Ms. Gogas acknowledged at hearing that this discussion would occur again as Student was fast approaching age 19. Ms. Gogas has a strong attachment to Student. New to teaching, he was one of her first students, and she has worked with him under very challenging circumstances for nearly two school years. She was emotional when testifying about the possibility of him leaving Lattice.

38. Ms. Gogas' class typically has 10 students and five class aides. Student and one other classmate are assigned rotating one-to-one aides. There is one large classroom divided into a work area and a kitchen, and two small attached rooms, each 11 by 13 feet. Student is stationed in one of the separate rooms by himself, in a desk facing a wall. There is a mat on the floor that he likes to lay on. The school day runs from approximately 8:00 a.m. to 1:10 p.m. Student then attends the after-school program until 4:30 p.m.

39. Student's dysregulation emerged within two weeks of returning home. As explained by Mother at hearing, "Since then, [Student] has not felt well." Parents stopped using a reinforcement chart because Student's mental health symptoms re-surfaced; his obsession about the chart caused him to sabotage his reward. He would then engage in his pattern of self-injurious behavior to punish himself. Student's behavior at home and school has always been cyclical, and remained so at the time of hearing. In a good cycle, he will have two to three minor behavior incidents a week; in a bad cycle, he will have

⁹ Ms. Gogas is not a fully credentialed teacher. She began her education specialist credentialing program in August 2017.

several incidents per day of increasing intensity. Student can deliver hundreds of blows to his head in a 15 minute period, resulting in injury.

ADDITION OF ONE-TO-ONE AIDE

40. On January 24 and 25, 2017, Lattice needed to restrain Student three times to keep him safe. On January 24, 2017, Mother dropped Student off at school and he began to perseverate about taking the bus to school. He started screaming and hitting himself on the head with an open and closed fist in the parking area. Staff attempted to block his blows and talk to him as they prompted him to the ground. Student continued to attempt to hit himself on the legs and struck the cement instead several times, bloodying his hands. Two staff attempted to escort Student inside and he hit one staff in the head. Once inside, he continued to hit himself in the head and staff blocked and evaded. The incident lasted 30 minutes, though Student was unable to return to program for three hours. That afternoon, Student again escalated with the same pattern. He was non-responsive to staff's de-escalation attempts and continued to strike himself in the head despite their defensive blocking attempts. Three staff attempted a supine containment during which Student kicked one staff in the face. Four staff placed Student in a supine containment for approximately six minutes. Due to his re-escalation upon release, a second restraint was initiated for just under six minutes. This incident also lasted 30 minutes. Student sustained bleeding, swelling, bruising, and redness; a staff member sustained a split lip and abrasions.

41. The next morning, Student knocked his supplies off his desk, cutting his hand and causing property damage. He began to scream and strike himself in the head. He bit Ms. Gogas' finger during a restraint. Student was restrained for 12 minutes. He continued to cycle and attempt to self-injure 30 minutes later.

42. Because of Student's extreme behavioral dysregulation, Santa Rosa drafted a January 26, 2017 IEP amendment, to add intensive individual services by way of a one-to-

one full-time aide for Student. Parents consented. Student required this increased level of staffing because he was quick to escalate in class. Even within the small, specialized behavior program at Lattice, Student required additional one-to-one support for his safety and that of others, and to facilitate his engagement.

43. The January 25, 2017 incident was not the first time Student had injured Ms. Gogas. Since August 2016, he has bit her six times, and hit and kicked her numerous times, causing bruises, breaking the skin, and prompting her to seek medical attention. She emphasized that his behavior outbursts are typical for the students at Lattice. On an average week, Ms. Gogas receives one to five injuries from her students. Ms. Ingels testified that her staff are hit, bit, and kicked daily. Ms. Gogas acknowledged at hearing that Student is the most frequently restrained student in her classroom. During physical and verbal outbursts he makes threats to hurt and kill staff. Ms. Gogas structures her class so that no staff is ever left alone with a student. She acknowledged that if she were alone with Student without support, she would not feel 100 percent safe. On April 6, 2018, during a tantrum, Student again bit Ms. Gogas. She testified that Student had experienced a few difficult days as of the time of hearing, and she forecasted that he was headed toward a high behavior cycle.

Student's Target Behaviors and Injuries

44. As originally identified by Mr. Goitein, Student's three target behaviors as of the time of hearing remained: self-injurious behavior (striking his head or body, kicking, pinching or biting); tantrum (screaming and any combination of self-injurious behavior, aggression, or negative self-talk); and non-compliance. Student's behaviors have waxed and waned from January 2017 through the time of hearing, but continue to occur. Student's self-injurious behaviors are associated with his on-going internal struggle with the voices and imaginary characters in his head which cause him distress. Parents have continually kept Santa Rosa informed about Student's changing medication regimen

which has not effectively targeted his mental health symptoms, but instead has exacerbated his insomnia and physical outbursts. Lattice staff, after-school staff, Student's assigned counselor from LifeWorks, law enforcement, Kaiser doctors, and recent assessors have all observed Student's on-going internal battle played out in varying degrees.

45. Ms. Gogas has witnessed Student responding to internal stimuli, which can be a precursor to his outbursts. Frequently, there is no identified external antecedent to his self-injurious behaviors, and therefore, no warning. Ms. Gogas provided a recent example. On April 15, 2018, Student seemed happy to walk with her on the blacktop, but when he returned to class he removed his noise-cancelling headphones, hit the sides of his face over his ears, and was unresponsive to her. She and another staff attempted to block his blows to minimize injury. They were, as she described, "somewhat successful" in that Student did not require a full restraint.

46. Lattice staff took daily data on Student's target behaviors, and Mr. Goitein analyzed the data monthly and compiled graphs. In February 2017, Lattice restrained Student five times due to his self-injurious behaviors. The behavior data shows that Student engaged in a total of 10 tantrums and one isolated incident of self-injurious behavior at Lattice during February 2017.¹⁰ In March 2017, Student engaged in 12 tantrums, two of which lasted the entire day, and 13 separate incidents of self-injurious behavior.¹¹ Lattice filled out three behavior emergency reports, two for March 27, 2017, which document a total of 8 restraints over a 90 minute period.

47. Student introduced into evidence of a total of 34 behavioral emergency

¹⁰ Reported data on target behaviors is from Lattice's non-public school, not its after-school program, unless otherwise noted.

¹¹ The behavior data listed 11 tantrums which does not accurately account for both behavior emergency restraints on March 27, 2018.

reports from Lattice and three from the after-school program from the period of January 24, 2017, through March 28, 2018. Student's repeated behaviors of striking his face, head, and ears resulted in permanent hearing loss, bleeding wounds on his face and head, swelling and bruising, and redness. Twice in April 2017, Student returned home with so much facial swelling he could not open his eyes. Parents described him as being virtually unrecognizable at those times. Father testified that they became numb over time.

APRIL 2017 ANNUAL IEP

48. On April 4, 2017, Santa Rosa convened Student's annual IEP team meeting. The day prior, Lattice had restrained Student based on his usual behavior cycle of screaming and hitting his face and head. Parents shared their concerns for Student's safety and his behaviors which prevented him from accessing an education. Parents expressed these same concerns at every IEP team meeting through and including the January 22, 2018 meeting. Specifically, they reminded the team that Student's education plan had always been to reduce his behaviors so he could return to academic work commensurate with his cognitive ability and past academic achievement. By April 2017, Student had lost interest in things he used to enjoy and was no longer making and recording songs or films. Student's obsessive compulsive rituals and defiance had increased at home and school.

49. The team reviewed Student's strengths and present levels. At this time, he was taking the medications Clonidine and Seroquel. Student was very capable but he demonstrated a wide and inconsistent range of academic and functional performance. This was not only due to his behaviors but also because of the constraints of Lattice's programing which centered on behavior management and functional life skills. Lattice, through its lens of behavior management, identified Student's "major strengths" as his ability to follow directions and complete familiar tasks when in a good mental space.

50. Student had participated in very few class activities since October 2016.

There was a steady decline over the school year such that he was no longer engaged or participating. There were days when he would say nothing at school. It took Student approximately 30 minutes to transition from the car to his class with constant prompting; the short walk from his classroom to the adjacent after-school program required two staff members and up to 30 minutes. He would retreat to the bathroom for 30 to 45 minutes at a time; one of his obsessive compulsive behaviors was excessive hand washing. When Student was responsive, he would complete one small task over the course of the school day. Even after the addition of a one-to-one aide at Lattice, Student's behaviors showed a marked increase in intensity and frequency throughout February and March 2017. His periods of non-compliance ranged from several hours to all day. Mr. Goitein now hypothesized that the function of Student's behaviors was to either gain attention or to avoid and escape. His new behavior intervention plan focused on withdrawing demands and helping Student to request breaks.

51. Student failed to meet any of his 2016 annual goals and his functioning and academic performance regressed. Ms. Gogas established that Student's high behavior cycles caused his performance to stagnate, and when these cycles lasted more than two months, Student regressed. Ms. Gogas needed to re-teach him simple tasks. This educational impact of Student's behaviors continued through the time of hearing.

52. Between December 2016 and April 2017, Student did not make progress on any of his goals due to his disengagement and work stoppage. On his figurative language goal of understanding idioms, Student was no longer able to access the Read Naturally program which presented idioms in context through a short story format. Speech therapist Katie Franchetti changed to an easier format and presented idioms in short sentences.¹² When Student could no longer access that format, she again simplified the

¹² Ms. Franchetti has been a licensed speech pathologist for 10 years.

task to a basic worksheet with multiple choice answers. By April 2017, Student was no longer accessing this simplified curriculum. Similarly, Student was no longer reading, walking laps, or accessing his problem solving goal. Hindered by his obsessive compulsive rituals, Student's percentage of time on task had regressed from 60 percent of the 20-minute work period, to inconsistently being on task for up to five minutes with constant prompting. Student was unable to access his self-monitoring behavior goal because he was unable to regulate his behavior, a prerequisite to being able to self-record his actions.

53. At the April 2017 IEP team meeting, Lattice recommended removing all academic work and reducing demands based on Mr. Goitein's new hypothesis that Student acted out to avoid demands. Accordingly, Santa Rosa removed academics as an area of need. Santa Rosa did not discuss assessments, additional services, or an alternate placement. Ms. Ingels testified that there is no good alternative to placement at Lattice; students who do not succeed in her program have few options. Conversely, Lattice has never transferred a student out of its school to a diploma-track program. Lattice proposed a new communication goal, pared down his self-regulation and work completion goals, and carried over his walking goal and understanding 36 idioms goal.

54. Student does not have any friends and required numerous prompts or structured scripts to interact with peers. It takes him several months to form a relationship with a preferred staff member, evidenced by his knowledge of their name and occasional requests that they stay by his desk. Student's communication goal called for him to attend four social skills groups per month and participate in at least one task. Lattice offers daily social skills groups in the classroom, and a weekly snack group and vocational group outside the class. Student was the founding member of the snack group back in June 2015.

55. Student was not using his sensory-motor tools such as putty, taking walks, or writing music, like he had in the past to achieve a "ready" state for engagement. Mr. Goitein proposed a new self-regulation goal targeting a lower level skill. This goal called

for Student to engage in a preferred sensory task prior to a work task. Lattice also proposed a simpler work completion goal which called for Student to complete three assigned tasks per work period with one-to-one support, reinforcement, and prompting. Mr. Goitein explained at hearing that to implement this goal, staff would identify and target basic tasks that Student could easily complete with prompts.

56. The April 2017 IEP offered less ambitious goals and continued the same level of services, including Student's one-to-one aide. Despite Student's disengagement from the learning process, loss of interest in things he used to enjoy, and severe self-injurious behaviors, Santa Rosa did not offer to assess Student's social, emotional, behavioral, or mental health needs, and did not offer mental health services. Despite having been placed at Lattice to address his severe behaviors nearly two years prior, and despite his behaviors remaining unabated, Santa Rosa did not discuss with the IEP team, or attempt to identify, an alternative placement that may allow Student to access his education. Parents provided consent to the IEP at the April 4, 2017 IEP team meeting.

Increase in Severity and Frequency of Target Behaviors

57. April 2017 was a particularly dangerous month for Student at school. Lattice completed eight behavior emergency reports. Student engaged in 13 tantrums,¹³ one of which lasted all day, and six incidents of self-injurious behavior. On April 6, 2018, the school nurse was so concerned about the immediate swelling on the bridge of Student's nose that occurred during a tantrum, she sent him home. Student's doctor determined his nose was not broken, but there was evidence of past cartilage damage.

58. Mother provided vivid testimony of picking Student up from school in April 2017 and being greeted by a teacher and two aides who shared that Student had

¹³ The behavior data listed 12 tantrums which does not account for both behavior emergency restraint incidents on April 26, 2017.

experienced a hard day. His face was unusually swollen and he could not open his eyes. Mother reached out to the Sonoma County Office of Education for assistance to ensure Student's safety. Parent testified that a County staff member told her that Student likely did not feel pain like others do. This was a turning point for Mother; she realized she would need to take steps to protect Student on her own since Lattice could not keep him safe or educate him. Parents hired an educational consultant who recommended three out-of-state placements given Student's profile. One was Monarch Center for Autism in Ohio.

59. Student's self-injurious behaviors soared in May 2017 to a total of 45 incidents and a total of 7 tantrums, necessitating two restraints at school. June through August 2017 saw a marked reduction in behaviors though Student was only present for 14 days in June, 6 days in July, and 11 days in August. Even so, there were a total of four restraints in this period of time, five tantrums, and five separate incidents of self-injurious behaviors.

60. Student weighed approximately 158 pounds by February 2018. Mother is a petite woman of small stature. By ProAct standards, a one-person restraint would never be safe with Student and would risk injury to Student and to the individual attempting to restrain him. From prior to Student's placement at Turning Point in April 2016, Father who is of slim stature, was no longer able to restrain Student. Parents could not safely restrain Student, not only because of his size, but also because his level of aggression was intensifying. Beginning in 2016 through the time of hearing, Parents hired Lattice staff to help with Student in the home when Father could not be there.

61. From June 2015 through July 2017, Sarah Cobb was a behavior assistant at Lattice's after-school program and also worked with Student one day per week in his classroom. Beginning in 2016 and through the end of 2017, Parents hired Ms. Cobb to

work with Student at home. She testified at hearing. To prevent Student from harming himself, Ms. Cobb sometimes needed to attempt to restrain Student with Mother's help. Student was too big for the two of them to effectively restrain him; he would break free and injure Mother. Student engaged in the same self-injurious behaviors at home, Lattice, and the after- school program. Ms. Cobb established that his behaviors did not improve. Student was often disengaged and non-responsive at his after-school program, just as he presented in class. Ms. Cobb often observed Student yell that an imaginary character was telling him to hit himself and that he had to listen to this character. He would then engage in self-injurious behavior. Ms. Cobb and the after-school team tried to convince Student that what he saw and heard was not real; sometimes they could reach him, but often they had to restrain him.

62. At the end of July 2017, Student began to persevere about not hurting Mother and then would compulsively end up harming her. Four times during August 2017, Mother received scratches and finger-shaped bruises on her thighs from Student grabbing and squeezing. Father received panicked calls and text messages from his daughter to come quick as Student was attacking Mother. These instances of aggression occurred in the 15-30 minute period of time between Mother picking Student up from the after-school program and Father returning home from work. Parents did not call law enforcement during this period because it was their experience that police would place Student on a mental health "5150 hold" and take him to the hospital emergency room where he would be medicated and released in a disoriented state.¹⁴ In this condition, Student had less self-control and was more prone to harm himself and others.

¹⁴ Pursuant to Welfare and Institutions Code section 5150, a person who as a result of a mental health disorder is a danger to self or others or is gravely disabled may be taken into custody by a police officer for up to 72 hours for evaluation.

63. Parents provided Lattice with daily updates of Student's functioning at home. While the Lattice non-public school and the after-school program were separate programs, Ms. Ingels oversaw both programs and they shared behaviorists for continuity of behavioral approach. Lattice was aware of Student's functioning and response to behavior interventions at the after-school program. As of August 2017, Hilary Power, Director of the after-school program, also assumed the role of Lattice's Director of Program Coordination and attended Student's IEP team meetings. Santa Rosa is attributed knowledge of Student from both programs.

PARENT'S REQUEST FOR RESIDENTIAL PLACEMENT, SEPTEMBER 14, 2017

64. After discovering that Monarch would likely accept Student, Parents met with Lattice administrative staff the end of August 2017 to express their belief that Student required more than Lattice could provide and of their intent to seek residential treatment. On September 14, 2017, Parents sent Program Manager Julie Promes an email requesting that Santa Rosa place Student at Monarch and convene an IEP team meeting.¹⁵

65. In response to Parent's request, Santa Rosa convened Student's IEP team on September 22, 2017. Parents explained their position that Student required a comprehensive program with consistent, continuous support around the clock to help him break his behavior cycles so that he could access instruction, including more challenging academic work at his level of ability. Parents reminded Santa Rosa of Student's significant emotional needs and anxiety, and that medication trials often exacerbated his symptoms. Parents shared their efforts to understand and help Student over the years. They had explored possible physiological causes for Student's outbursts,

¹⁵ Ms. Promes has a preliminary administrative services credential and became a program manager with Santa Rosa in August 2017. She previously served as a special education teacher for 12 years.

accessed psychiatric care, sought a second opinion from Dr. Goldwasser in 2015 and from the MIND Institute at UC Davis, and secured in-home services from North Bay and Kaiser. They informed the team that Student was again receiving in-home behavior services through Kaiser with Autism Treatment Services. Parents shared that it is not safe for Mother or for Student, if the two are home alone. Student continues to engage in self-injurious behaviors day and night, and he requires restraint for his own safety. Parents cannot safely provide this physical intervention when needed and home providers are not authorized to assist.

66. At the September 2017 IEP team meeting, Ms. Powers acknowledged that over time Lattice had to make several modifications to Student's behavior plan and reinforcement strategies to more effectively address his behaviors. Mr. Goitein conceded that he has not been able to determine the function of Student's behavior, and it appears the function changes, which adds to the complexity of serving him. Ms. Promes informed the team that Student seemed to be seeking restraint. However, she has no behavior expertise and had never seen Student engage in a tantrum. Santa Rosa wanted time to review Student's records and contact his Kaiser providers to determine if an assessment was warranted given Parents' request for residential placement. Santa Rosa neither granted nor denied Parent's request for residential treatment. Although Parents provided signed releases on September 25, 2017, Santa Rosa did not consult with Student's private service providers through Kaiser or North Bay.

67. Parents are clearly devoted to Student. They presented as sincere and conscientious and provided thoughtful, detailed testimony. They do not want to send Student away, but they know he requires the consistent, professional treatment provided by a multi-disciplinary team of practitioners experienced in Student's areas of disability. Student's areas of disability include autism and his related pragmatic and inferential language deficits; mental health disorders of depression, obsessive compulsive disorder, and anxiety with symptoms of internal distraction and talking to and through imaginary

characters; and his extreme self-injurious and aggressive behaviors. Parents treasure the good times with Student during his low behavior cycles, including gardening, cooking dinner, reading books, playing games, and hiking. However, Student is caught in a cycle of constant chaos, unable to sleep and unable to contain himself. Parents can no longer safely restrain him, resulting in frequent trips to the emergency room to receive chemical restraints, only to return home more agitated as no hospital is willing to admit him as detailed below.

Student's Spike in Behaviors

68. In September 2017, Lattice restrained Student during four behavior incidents. At school, Student engaged in five tantrums, 12 separate incidents of self-injurious behavior, and one incident of aggression. This constituted a spike in Student's behaviors since May 2017, breaking the relative downward trend. At hearing, Mr. Goitein did not testify about this spike as he relied on his behavior graphs which erroneously captured only four instances each of tantrums and self-injurious behavior. These graphs do not accurately capture the number of behaviors from the monthly data sheets in evidence.

69. The behavior intervention plan from March 2017 which called for the reduction of work demands had not been successful in addressing Student's behaviors. Mr. Goitein logically concluded that escape or avoidance was not the sole function of Student's behavior. Since Student would tantrum when he did not have work, Mr. Goitein determined that Student needed to be kept busy, and given work he could perform. Thus began the fifth behavioral intervention plan on or about the start of the 2017-2018 school year.

70. On October 9, 2017, deadly wildfires struck the Santa Rosa area. Lattice was closed for two weeks, re-opening on October 23, 2017. Santa Rosa's District Office closed for three weeks. Father sent several emails to Ms. Promes inquiring about Santa Rosa's

response to Parents' request for residential placement and reminding her of the urgency given Student's needs. Ms. Promes responded that the fires had resulted in delays. She also asked Parents to complete a release of information for Santa Rosa to contact Seneca, a non- public agency, so she could set up wrap-around in-home support services. Father informed Ms. Promes that there was no in-home service that would meet Student's needs. Still, Parents signed additional releases and were open to more providers coming into their home.

71. Parents and Student needed to evacuate during the fires, and drove to a relative's home in Colorado. At first Student enjoyed his visit, then he began screaming at night and injuring himself such that Father needed to hold him. Parents described Student as punishing himself for being happy because the voices in his head told him he should not be happy. On their return trip, Student began to hit himself. When Parents did not try to stop him, he punched Father who was driving. Student severely bit Mother's finger when she tried to pull Student off of Father. A sister called 911 as Father pulled over. Student bit Father's arm. Police, fire, and ambulance responded. Student was handcuffed until he was calm and could safely travel.

72. As noted in Lattice's behavior data, Student required one restraint in October 2017, and engaged in five tantrums and six incidents of self-injurious behavior. Beginning in October 2017, Parents began to call law enforcement more regularly due to his extreme behaviors. On October 22, 2017, Parents called 911 at 9:30 p.m. due to Student's severe self-injurious and aggressive behaviors. Dispatch noted loud, intense screaming in the background and police responded. As the local Kaiser hospital was still closed, police remained until Student calmed.

November 2017 Iep: Offer of Additional Services and Offer to Assess

73. Santa Rosa convened Student's IEP team on November 1, 2017, with its attorney present even though Parents did not bring legal representation. The tenor of this

meeting changed with Lattice members focusing on Student's recent improvement and highlighting his academic work for the first time. Ms. Gogas was increasing his academic work load, and Lattice reported that Student was rising to the new expectations, accessing some academics, and self-monitoring when he needed a break. Student had recently engaged in the class social skills groups, and was more compliant. The after-school program staff's report was more reserved. They noted that while Student had shown some improvement in the past week, his behaviors remained cyclical in nature.

74. Parents highlighted their continuing concern for Student's safety. Twice in October 2017, he came home with facial bruising and a black eye and blood clot requiring medical assessment. Lattice emphasized that restraint was only used as a last resort in accordance with legal requirements. Misconstruing Parents' request for Monarch as a request for more frequent restraints, educational team members and their attorney informed Parents that Monarch was subject to the same restraint regulations as Lattice. Knowing that Student's repeated blows to his head and ears resulted in hearing loss, and having seen Student come home from school time and again with a self-inflicted swollen and bruised face and bruises on his body, Parents requested that professionals working with their son consider his safety when determining the need for a restraint. Parents expressed that Monarch could provide the consistency that all team members agreed he required; this consistency was needed around the clock.

75. Parents updated the team on Student's new medication regimen. He was taking a lithium supplement and Gabapentin with some success. In terms of home supports, Kaiser was providing behavior services Monday through Saturday, for two to three hours per day. These included cognitive behavioral strategies which Parents noted were helping Student to have more organized thoughts. Student was able to write three pages about his feelings. Parents informed the team of Student's recent behaviors necessitating police involvement.

76. At the November 1, 2017 IEP team meeting, Santa Rosa agreed with Parents

that instead of addressing just his behaviors, Student's mental health also needed to be addressed. However, Santa Rosa told Parents that it wanted to look at how to meet Student's needs at Lattice. Santa Rosa proposed a mental health assessment by a clinical psychologist and a functional behavior assessment. Student had never had a school-based mental health assessment, and the last functional behavior assessment was conducted at Anova in spring 2015. The assessment plan specified the purpose of the assessments was to determine the level of supports needed to address Student's behavioral challenges and mental health needs.

77. Pending the assessments, Santa Rosa offered the following additional services: 60 minutes per week of parent counseling in the home; 75 minutes per week of individual counseling at school; and 300 minutes per week of behavior intervention services in the home, all to be provided by a non-public agency through January 17, 2018. In offering Student weekly individual counseling, Santa Rosa acknowledged his underlying needs were not being met by behavioral services only. Ms. Promes believed Student would be able to access counseling with flexible scheduling at times he was engaged, and shorter sessions several times per week. Santa Rosa offered the five hours of home behavior help so that a professional could assist Parents with either Student's morning or afternoon routine, although this support person would not be authorized to restrain Student if necessary. Parents consented to the assessments and the additional services on November 3, 2017, though they did not agree that the additional services would meet Student's needs.

78. Parents noted that since their request for residential placement, Lattice and its after-school program were sending home fewer behavior emergency reports and incident reports documenting Student's injuries. Student came home from school with facial bruising on October 23, 2017, and a black eye on October 31, 2017, without incident reports. Ms. Promes spoke with Ms. Ingels after the November 2017 IEP team meeting and informed her that Lattice was not required to send Parents reports of

Student's injuries at school, such as a black eye, but rather could document that in their communication log if they felt necessary. In October 2017, Student engaged in five tantrums, six incidents of self-injurious behavior, and one incident of property destruction. That month there was one behavior emergency report.

79. Seneca declined to serve Student as its program does not specialize in autism. Another agency declined as they did not have sufficient staffing. Santa Rosa contracted with a non-public agency called LifeWorks. By late November 2017, Henry Olcese was assigned as the in-home behavior support and Student's individual counselor.¹⁶ He began observations that month and started to deliver services in January 2018. About that same time, Parents began to receive parent counseling from LifeWorks.

Student's Functioning in November and December 2017

80. In November 2017, Student did not engage in any target behaviors at Lattice for the 14 days he was present. On November 12, 2017, police responded to a 911 call at 6 a.m. to the family home. Student had injured Mother and was taken to Kaiser by ambulance. On November 19, 2017, police responded to a 911 call to the family home at 8 p.m. Law enforcement placed Student on a 5150 hold and Student was taken by ambulance in restraints to Kaiser. Upon arrival he was exhibiting severe psychotic symptoms and anxiety. Student was screaming and banging on the walls and unable to contain himself without the help of security guards. Student was chemically restrained with injections of Ativan, Haldol and Benadryl. The next morning, Student was released with a recommendation that Parents increase his Seroquel and add Depakote, a mood stabilizer and anti-anxiety medication.

¹⁶ Mr. Olcese has worked with LifeWorks since February 2017 as a Marriage and Family intern and behavior coach. He previously worked as a registered behavior technician for four years with Autism Spectrum Consultants.

81. Parents routinely updated Lattice about Student's presentation and any incidents when they brought him to school. Student's behaviors at home and school presented the same in terms of type and intensity, but they did not necessarily correlate. For instance, he would at times come to school from a hospital visit the night or morning prior and have a low behavior day at school. Other times, he would escalate.

82. In December 2017, Student was the subject of one behavior emergency report, and engaged in 2 tantrums, and 14 incidents of self-injurious behavior. Mr. Lucas testified that come December 2017, he began to realize that Student had academic abilities that he did not expect. He saw Student read full paragraphs on a computer; type at a good pace; perform math problems with ease; and work on antonyms and synonyms. Still in the process of getting to know Student, Mr. Lucas found this "eye-opening." Typical Lattice students do not function at this academic level.

STUDENT'S PRIVATE NEURO-PSYCHOLOGICAL EVALUATION

83. Concerned that Santa Rosa's assessments may take some time, Parents retained Dr. Sara Rice Schiff to assess Student.¹⁷ They paid \$5,500 for her to complete a neuro-psychological evaluation of Student. Dr. Schiff has conducted more than 300 evaluations of individuals dually diagnosed with a severe mental health disorder as well as autism. At hearing she was qualified as an expert in autism and mental health disorders, and their combined presentation. Dr. Rice spent a total of seven hours with Student over

¹⁷ Dr. Schiff is a licensed clinical psychologist with an emphasis in neuropsychology. She has worked in the field of mental health for 20 years. Since 2005, she has conducted regional center evaluations and has been in private practice since 2006, conducting independent education evaluations for districts and families. Dr. Schiff conducted nearly 200 evaluations annually for many years, and currently completes approximately 50 per year.

three separate testing sessions in November 2017, and observed him at school for one hour in December 2017. She interviewed Ms. Gogas and Parents, and read hundreds of pages of Kaiser and Lattice records through December 2017, including the behavior emergency reports. These records were notable for the intensity and frequency of Student's behaviors and the multiple injuries suffered by Student, staff, and Parents. She also reviewed and analyzed all prior assessments of Student dating back to when he was four years old including psychiatric assessments.

84. Dr. Schiff observed Student at Lattice stationed alone at a desk in a small room facing the wall. The room had a padded mat and a partition. On the other side of the partition a non-verbal classmate repeatedly threw a ball against the wall. Student was frequently non-responsive. He stared at the wall and appeared to be internally distracted. With repeated prompting from Ms. Gogas, Student minimally engaged in two basic academic tasks: reading and copying a simile and answering two questions about a reading passage. He screamed very loud one time with no apparent stimulus, and then returned to being disengaged. Ms. Gogas testified that this was a typical day for Student.

85. Dr. Schiff had Father and Ms. Gogas complete numerous rating scales: the Adaptive Behavior Assessment System, Third Edition; the Behavior Assessment System for Children, Third Edition; and the Behavior Rating Form of Executive Functioning, Second Edition. Both raters identified Student as having significant executive function deficits; clinically significant scores for most emotional and behavioral functioning scales; and extremely low overall adaptive skills. They noted atypical behaviors by Student, such as fearing the actions of imaginary characters, which suggested the presence of delusions or hallucinations.

86. Dr. Schiff administered the following instruments to Student: Autism Diagnostic Observation Schedule, Second Edition, Module 4; the Expressive and Receptive One Word Picture Vocabulary Tests; the Wechsler Adult Intelligence Scale, Fourth Edition; the Woodcock-Johnson IV, Tests of Achievement Form A; and the Rorschach Test

(attempted). His effort was inconsistent, and at times he was non-responsive. Although Dr. Schiff obtained limited assessment data, she had sufficient information to complete her assessment, formulate her opinions, and render a diagnosis. During her testing sessions, Student repeatedly wrung his hands, smiled and laughed to himself without contextual reference, and paced. He appeared quite internally distracted. Student spoke in short but fluent sentences but did not respond to any questions about his emotional state.

87. On the Wechsler, Student obtained significantly discrepant scores on the four indexes that are used to determine a full scale intelligence quotient. Due to these discrepancies, Student's I.Q. score could not be considered valid. Given Student's diagnosis of autism and related language difficulties, Dr. Schiff reasonably concluded that Student's score on the Perceptual Reasoning Index, which is less dependent on verbal skills, was the best estimate of his cognitive ability. Student received a standard score of 98 on this index, showing average cognitive functioning.

88. On the Woodcock-Johnson, Student's oral reading subtest score was in the high average range (standard score of 111) and his next highest subtest score was in the average range (standard score of 91) in letter-word identification, though his reading comprehension was in the impaired range (standard score of 57). Student's internal distraction and inconsistent effort resulted in lower academic testing scores. Dr. Schiff established that because test standards increase over time, Student's high average and average score reflect progress and some intact academic skills such that he should be provided access to a diploma-track curriculum. Dr. Schiff acknowledged that Student requires mental health interventions to access an academic curriculum, but with these services he should be allowed to access higher-level academics consistent with his ability.

89. Dr. Schiff diagnosed Student with Autism Spectrum Disorder, without intellectual impairment, with pragmatic language impairment; Major Depressive Disorder, Moderate, Recurrent; rule out Major Depressive Disorder with Psychotic Features; and

Generalized Anxiety Disorder. She determined that the possibility of psychosis warranted further evaluation. At the time of her testimony, she was aware that Student's psychiatrist had subsequently confirmed her suspicions and diagnosed Student with Major Depressive Disorder with Psychotic Features. Dr. Schiff captured a comprehensive picture of Student from her thorough document review and time spent with him. Her explanation that his significant internal distraction is upsetting to him, holds more weight for him than what is occurring in the outside world, and results in his self-injurious behavior, was persuasive and unrefuted. All professionals agreed that Student's internal process, to some degree, causes his dangerous outbursts which prevent him from accessing his education.

90. Behavior interventions worked well through most of eighth grade until Student's depressive symptoms took hold. Dr. Schiff's conclusion that Student's most acute area of need is his mental health was corroborated by past assessments, school records, and, as explained below, Santa Rosa's own expert Dr. Mills. Dr. Schiff persuasively established that without mental health intervention to learn the skills to distinguish fantasy from reality, Student will be unlikely to access any educational program or develop transitional skills. Dr. Schiff established that cognitive behavioral therapy for Student must be concrete, less insight-oriented, and targeted to help him identify how his body is feeling and what he is thinking in the moment. It would incorporate pictures and diagrams to help Student, with his disability-related weaknesses, connect his body feelings to his thought process, obtain agency over his thoughts, and help him understand the voices are not real. In her experience, few professionals have the training and experience to deliver this type of therapy tailored for individuals with autism.

91. Dr. Schiff credibly concluded that Student requires a team of professionals around the clock to provide multi-faceted and consistent interventions across environments, including medication management and cognitive behavioral therapy by professionals experienced in treating individuals with autism. She has more than 10 years of experience providing direct psychotherapy to individuals with autism and for several

years she trained mental health practitioners how to work with this population. She is knowledgeable and experienced in several therapeutic modalities including cognitive behavioral techniques. As such, her testimony regarding Student's mental health and counseling needs was entitled to substantial weight.

92. Dr. Schiff's opinion that Student required in-patient treatment was not persuasive as this is not her area of expertise. However, her underlying rationale that his multiple medication adjustments resulted in dangerous outbursts and frequent emergency room visits credibly supported her recommendation for residential treatment to break the cycle of chaos. Dr. Schiff's opinions regarding Student's need for residential treatment were persuasive, based on a solid knowledge of Student's needs, and supported by her experience in treating individuals with autism. As such, her testimony was given substantial weight.

93. Dr. Schiff was familiar with the residential and educational programs at Monarch. Monarch is staffed with trained autism specialists qualified to provide Student with the mental health interventions he requires, including counseling and psychotropic medication management. Monarch can also address Student's self-injurious behavior with intensive behavioral services from graduate level behavior analysts; provide him with social skills training and an appropriate peer group with which he can practice his skills; community-based vocational training; and access to a high school curriculum.

DR. PAMELA MILLS' ASSESSMENT

94. Santa Rosa hired Dr. Mills to determine if Student was intellectually disabled and whether he met the eligibility criteria for having an emotional disturbance. Dr. Mills is an expert in conducting psychological assessments, and her testimony contrasting her limited assessment in his matter, with a complete educationally related mental health services assessment was particularly relevant.

95. Santa Rosa did not ask Dr. Mills to conduct an assessment of Student's

mental health needs or to determine his need for residential placement. At hearing, Dr. Mills established that although her report indicates that the stated purpose of her assessment was to help determine Student's educational needs and where to best deliver required services, this had not been accomplished. Rather, she limited her testing to answer Santa Rosa's narrow eligibility question. After she presented her findings, she was not invited to participate in an IEP team discussion regarding services and placement.

96. Dr. Mills established that typically an educationally related mental health services assessment is completed when a Parent is requesting mental health services including residential treatment. She was not contracted to perform this type of assessment. Prior to writing her assessment report, Ms. Promes and Ms. Randrup spoke to her on the phone and asked her opinion about Student's need for residential placement. Dr. Mills informed them that she "absolutely" believes he needs to be out of the home. However, she does not believe Student needs residential placement to benefit from his education based on his reported progress on his IEP goals at Lattice.

97. Dr. Mills reviewed far fewer records than Dr. Schiff had analyzed. She read some past assessments of Student, his April and November 2017 IEP's and behavior plan, and one behavior emergency report from September 2017. She observed Student at Lattice for less than 30 minutes, and most of the information she received about Student came from Mr. Lucas, a part-time behavior specialist at Lattice who had just started working with Student in June 2017. She administered a small portion of the Perceptual Reasoning Index from the Wechsler and the Millon Clinical Multiaxial Inventory IV to Student, and had Parents and Ms. Gogas complete one measure, the Conners Comprehensive Behavior Rating Scales.

98. During testing Student appeared to be responding to internal stimuli. He talked, smiled, and laughed to himself, and stared blankly at times. He was able to read aloud the Millon test questions which are written at sixth grade level, but he needed

prompts to continue. Student was only able to complete part of the Wechsler.¹⁸ Dr. Mills agreed with Dr. Schiff that Student's perceptual reasoning score is the most accurate measure of his cognitive ability. Consistent with Dr. Schiff's testing, Student scored in the average range. Dr. Mills agreed with Dr. Schiff that Student is not intellectually disabled, though he was no longer functioning at the level he had previously achieved. She opined that Student would not be able to attain a high school diploma given the level of rigor required, his age and credit-deficiency, and his history of school anxiety and fear of failure in ninth grade. Even so, she agreed with Dr. Schiff that Student should have access to more challenging academics including a high school curriculum.

99. In accord with Dr. Schiff's conclusions, Dr. Mills determined that some of Student's behaviors, including his struggle with internal stimuli, cannot solely be explained by autism. On the Conners, all three raters noted Student's signs of depression, extreme worries, repetitive thoughts and behaviors, unusual behaviors, and self-harm. All raters endorsed that Student's level of impairment, "very much" and "very often" interfered with academic, social, and home settings. Ms. Gogas reported no concerns with Student's learning, understanding, or academic performance, which supported the assessors' recommendation for a higher level curriculum.

100. Dr. Mills established that a clinical determination cannot be based on the results from one assessment tool. Student's responses on the Millon helped her to learn more about his own assessment of functioning. While Student identified the areas of "fearful/worrying" and "family life" as most troubling to him, Dr. Mills cautioned that Student's responses may signify a current inability to cope with perceived stress, or simply be reflective of his concrete thinking associated with autism. Consistent with Dr. Schiff's

¹⁸ Dr. Mills was not aware that Dr. Schiff had recently administered this measure. Otherwise, she would have chosen an alternate measure to ensure testing validity.

diagnosis, Student's responses showed he met the criteria for a depressive disorder and an anxiety disorder. Parent and Teacher rating scales confirmed this information.

101. Dr. Mills determined that Student meets the eligibility criteria for emotional disturbance as well as for autism. In summary, Dr. Mills established that Student has exhibited the following symptoms for a long period of time, to a marked degree: an inability to learn in that he is not working at the level of his academic potential; inappropriate behavior or feelings including self-injurious behavior, spontaneous laughter, self-talk, and feeling he deserves punishment; a general pervasive mood of depression; and a tendency to develop physical symptoms or fears associated with personal or school problems including fears he could not be successful. As for the criteria of having an inability to maintain interpersonal relationships, Dr. Mills did not credit this given it is symptomatic of his autism. With regard to the criteria of having schizophrenia, Dr. Mills credibly concluded that Student should be carefully monitored given his symptoms and his reported difficulty in distinguishing what is real. She believed schizophrenia to be "the most frightening of mental health conditions," such that professionals tread with caution in making this diagnosis.

102. Dr. Mills concluded that Student had been under a considerable amount of stress that not only exacerbated his symptoms of autism, but also his symptoms of depression. Dr. Mills persuasively explained in her report that Student's "emotional challenges are most probably the factor that most affects his academic performance as he is unavailable for learning when he is despondent, self-injurious, or lost in his own fantasy life and world of self-deprecation." Her opinions were corroborated by Student's experts. Dr. Mills did not render an actual diagnosis as she usually does, because she found Student to be "a puzzlement" with regards to his presentation.

103. Dr. Mills opined that Student did not need a residential placement to receive educational benefit. Because of her limited knowledge of Student and her misunderstanding of critical information, her opinion was not persuasive. For example, Dr.

Mills did not seem to be aware of the intensity of Student's behaviors and the severity of injuries he inflicted. She testified she did not think Student would intentionally harm someone, and unique from other assessors, Dr. Mills found it easy to re-direct Student from hitting himself with a light physical prompt. She was informed by Mr. Lucas that Student was steadily improving and meeting his goals. Dr. Mills erroneously concluded that Parents were not compliant with recommended medication regimens, and that Student had been physically abused and had an eating disorder. After discussing her findings with the IEP team in January 2018, she corrected these inaccuracies. These misunderstandings undermined the persuasiveness of her opinion that Student did not need residential treatment and should remain at Lattice.

104. At hearing Dr. Mills opined that Student would not have the ability to access cognitive behavior therapy as he did not have the verbal skills, insight, or desire. Dr. Mills does not provide therapy, did not conduct a thorough record review, and spent a limited amount of time with Student. Further, her opinion regarding Student's ability to access counseling was at odds with the reports of Parents and his counselor Mr. Olcese, that Student was accessing counseling services. Dr. Mills' opinion in this regard was rejected in light of Dr. Schiff's well-supported opinion to the contrary.

105. Dr. Mills agreed that a student's needs drive programming and placement. Santa Rosa did not ask her to identify Student's needs. Santa Rosa asked her opinion about residential placement without having conducted an assessment of this need, and then withheld her opinion that Student needed residential placement from Student's IEP team. Dr. Mill's disclaimer that Student's need for residential placement is about medication monitoring not education monitoring, and that treating depression is a medical issue, not a school issue, was not persuasive as it is at odds with her own conclusion that Student's mental health symptoms render him unavailable for learning. Additionally, her simplification of Student's need for residential placement as being solely for medical reasons fails to acknowledge the complexity of Student's presentation

testified to by virtually all witnesses. Dr. Mills agreed on cross examination that safety is a factor when determining an educational need for residential placement, and that self-harm counts as a safety concern.

DR. WILLIAM HENKEL'S ASSESSMENT

106. At Santa Rosa's request, Dr. Henkel conducted a functional behavior assessment of Student in the home setting beginning in November 2017.¹⁹ In his experience such an assessment in the home setting is unusual and of the roughly 100 behavior assessments he conducts per year, only two or three are done for the home environment. Dr. Henkel observed Student at Lattice, his after-school program, and at home. However, he did not see a tantrum or self-injurious behavior at school or the after-school program, and neither his report nor his testimony addressed any observations of an incident at home. Through his record review and home and school interviews, he determined that Student displayed the same severity of behavior in both settings. Dr. Henkel's assessment revealed that adults working with Student across the school and home environment are inconsistent in their approaches to his behaviors. He convincingly explained that Student requires consistency in interventions across all settings to effectuate change. This finding supports Dr. Schiff's conclusion that Student requires residential treatment.

107. While Dr. Henkel has assessed more than 100 cases of individuals with self-injurious behavior, Student's presentation was unique to him in that it was a form of self-

¹⁹ Dr. Henkel has a Ph.D. in developmental psychology and is a board certified behavior analyst. He has worked in the field of behavior and education for 33 years, completing more than 800 functional behavior assessments. He was the founder and senior behavior analyst of Anova for 13 years. In 2013, he founded the non-public agency Emerald Behavior and Education Specialists and serves as its senior behavior analyst.

punishment. Dr. Henkel has completed only a handful of behavior intervention plans for individuals with a dual diagnosis of autism and a mental health disorder. He does not have the training or expertise to diagnose or treat mental health conditions. Dr. Henkel's evaluation of Student, including report writing time and the development of a written behavior intervention, took almost three times as long as his typical assessment process due to the hours he spent researching and reviewing behavioral articles to make sure he understood the function of Student's behavior. He did not conduct mental health research.

108. Dr. Henkel opines that Student's imaginary characters personify his internal struggle of fear of actual punishment for his perceived failure to meet his own expectations. His theory that Student believes he deserves to be punished based on his feelings that he is worthless, implicitly acknowledges a mental health component driving Student's behaviors. Further, this theory of why Student injures himself supports Dr. Mills' conclusions that Student is suffering from an emotional disturbance and that his behaviors cannot be solely ascribed to his autism. As such, Dr. Henkel's testimony that Student's behaviors can be explained solely by his autism and his environment and addressed exclusively through behavior interventions was not persuasive. Further, his conclusion that Student's self-punishing script may be so entrenched that he finds positive thoughts or feelings to be aversive, also points to a need for more than simply a positive reinforcement, behavioral approach.

109. Dr. Henkel's behavior intervention plan calls for the use of many strategies, most of which had previously been tried, or were being implemented at home and school. He recommended adding a home escort service consisting of a behavior specialist in the home every morning to train Parents and ensure a safe transition to school. Dr. Henkel established that he would be able to gage the accuracy of his hypothesis and the success of his plan within three-six months.

JANUARY 2018 IEP TEAM MEETINGS

110. Santa Rosa convened Student's IEP team meeting on January 12, 2018, to review assessments and discuss Student's program and services. Santa Rosa agreed to add emotional disturbance as a secondary eligibility category based on Dr. Mills' findings. Dr. Mills suggested that a more challenging curriculum could increase Student's self-worth. Santa Rosa team members highlighted a sentence in Dr. Mills' report that indicated that significant relationships in Student's life had become insecure resulting in erratic and withdrawn behavior. This description was from the computer-generated narrative from Student's responses on the Millon; responses that Dr. Mills determined needed to be interpreted with caution given his high disclosure scale score. Based on this narrow profile, and counter to her practice of not considering the results of one test instrument in isolation, Dr. Mills informed the team that it would not be good for Student to be removed from his school relationships. She did not inform the team of her opinion that Student needed to be residentially placed because of his behaviors.

111. The IEP team also reviewed Dr. Schiff's recommendations, although Lattice team members had not yet received a copy of her report. Dr. Henkel presented his assessment and plan. Dr. Henkel, Dr. Mills, and Mr. Lucas all emphasized the need for consistent behavioral interventions across settings. The meeting adjourned prior to a discussion of program and services. Santa Rosa did not respond to Parents' request for residential placement. Ms. Promes testified that she did not ask Dr. Mills whether Student required residential placement because this was an IEP team decision. However, Dr. Mills was not invited to join part two of the IEP team meeting. Ms. Promes spoke with Dr. Mills after the January 12, 2018 IEP team meeting, and told her what Santa Rosa was considering offering to Student. Ms. Promes testified that based on her conversation she felt Dr. Mills agreed with Santa Rosa's January 22, 2018 offer, delineated below.

112. On January 22, 2018, Student's IEP team reconvened to complete the assessment reviews and discuss future programming. Dr. Mills did not participate.

Student's behaviors had increased at home and at school the prior week, though overall his behaviors improved since last year. Parents informed Santa Rosa that Student recently injured Father, and law enforcement brought him to the hospital. Mr. Olcese reported that he was working with Student on expressing his emotions and writing his thoughts. Dr. Henkel completed his review of his behavior intervention plan. He acknowledged that although some of his proposed strategies had been tried previously, Student required a tighter approach across all settings. Father expressed that implementation of the behavior plan was not feasible at home, and Dr. Henkel agreed that it was detailed, nuanced plan with an approach that may not make sense to Parents.

113. The team reviewed Student's December 2017 goal progress updates. Student had not yet re-engaged with the snack or vocational social skills groups, but was participating in his classroom social groups. He was making partial progress on his self-regulation goal but still required prompts to participate in a sensory activity. He exceeded his walking goal and was earning community outings to walk to the market next door, and he demonstrated knowledge of 30 idioms. At the time of the January 22, 2018 IEP meeting, Student's daily schedule included two task choices per work period. Student frequently became internally distracted, and when he was responsive, he required five or more prompts to initiate a task. At times, staff had to pick a task for him and hand-guide him through task completion. Still, his progress report on his work completion goal noted that Student was completing the expectations of his daily work periods. Academically, Student was reported to be adding fractions, working on budgeting up to \$30 with a calculator, and reading at the eighth grade level, although there was no evidence as to how his reading level was determined.

114. Student's areas of need were identified as functional math, social skills, communication, pedestrian education, occupational therapy, behavior, and counseling. Santa Rosa proposed a budgeting goal of pricing five items up to \$55; a math goal of completing one topic lesson per day with an on-line ninth grade course; a goal of

demonstrating two coping skills with two or less verbal prompts in the counseling setting; and a behavior goal of decreasing self-injurious behaviors from 6.7 per month to 3 per month. Despite Santa Rosa's proposal to adopt Dr. Henkel's home behavior plan, this proposed behavior goal was not developed for the home setting, and was not based on the reported frequencies of behavior at home, namely physical outbursts of three times per day during poor periods, and two times per week during good periods. Through its behavior goal, Santa Rosa acknowledged that Parents were not responsible for implementing a proposed behavior plan or goal at home.

115. At the January 22, 2018 IEP team meeting, Santa Rosa denied Parent's September 2017 request for residential placement given Student's progress on his goals, his improved behaviors, and the forecasted harm of disrupting his school relationships. Santa Rosa offered to continue Student's individual counseling and parent counseling; offered to implement Dr. Henkel's behavior plan with behavior consultation; and offered to double in-home behavior intervention services to 600 minutes weekly to allow for the recommended morning behavior escort service. Parents did not consent.

116. Ms. Promes prepared the notes for the January 2018 IEP team meetings. Parents were provided a copy of their procedural safeguards at the meetings. The notes reflect Parents' request for residential placement; Santa Rosa's offer of continued placement at Lattice; what it relied upon in making this determination; a description of each assessment it relied upon; a description of other options it considered and why those options were rejected; and a discussion of factors relevant to its decision to decline residential placement. On February 16, 2018, Ms. Promes sent a formal prior written notice to Parents with the above components; a copy of the procedural safeguards and who Parents could contact for assistance in understanding their rights; and a copy of the January 22, 2018 IEP amendment.

STUDENT'S PRESENTATION AND SERVICES, JANUARY 2018 THROUGH TIME OF HEARING

117. In January 2018, Student engaged in four tantrums and seven separate incidents of self-injurious behavior at Lattice. Father recounted an incident demonstrating Student's continued dysregulation that occurred in January while on a hiking outing with Student and his sister. Upon arriving at a park they frequently hiked at, Student decided he would not get out of the car, even though he wanted to hike. He then decided to get out of the car. Once he did, he decided he should not have done so and began to scream and hit himself. He went after his sister as she called 911. Father stopped him. Student was angry; he grabbed and squeezed Father's arm. In attempting to punch Father he missed and dented the car. Sheriff, fire, and ambulance arrived. It took some time for Student to calm.

118. Law enforcement was called to the family home on January 15, 2018, at 4:00 p.m. Student was transported by ambulance to Kaiser with facial swelling from hitting himself. He was discharged that night as hospitals were unlikely to admit him. Police responded to the family home on January 26, 2018, at 3:00 a.m. Student woke up screaming and hitting himself. He was transported by ambulance to Kaiser in soft restraints and presented with facial abrasions from self-injury. He was discharged later than morning.

119. In February 2018, Lattice prepared two behavior emergency reports and Parents received two additional reports of containments from the after-school program. Student engaged in five tantrums and four incidents of self-injurious behavior at school. Police were called to the family home five times, and transported Student on a 5150 hold to Kaiser four times. Twice he remained overnight. On February 6, 2018, he injured himself, assaulted Father, bit Mother, and destroyed property. On February 13, 2018, he struck himself in the head repeatedly, and assaulted Father. The next day, he hit himself and punched Father causing a facial laceration. Earlier that day on February 14, 2018,

Student bit two staff members, one on the collarbone and one on the leg. Student remained at Kaiser for two days. He was released as no hospital would admit him. On February 20, 2018, he was transported to Kaiser after he continued to strike himself in the face with force. He was released the next morning.

120. On March 26, 2018, Student was restrained at his after-school program when he hit the side of his head and face with his fists. He came home that day with his face bloodied and swollen. On March 27, 2018, Ms. Gogas filled out an incident report documenting facial redness, swelling, and blood due to Student striking himself at school. On March 28, 2018, Lattice completed a behavior emergency report which documented a prone containment of Student due to his behaviors of striking himself on the side of his face. Student suffered bruising, swelling, and bleeding; staff sustained bruising. Father recalled needing to call law enforcement one time in March 2018 to stop Student from harming himself or Parents. On April 3, 2018, the first day of hearing, Father testified that a Lattice staff member hired by the family, had to call 911 that morning because Student was destroying property at home and hurting himself. Law enforcement placed him on a 5150 hold and Student was taken by ambulance to Kaiser. On April 4, 2018, the cycle repeated.

Student's Recent Psychiatric Diagnosis

121. Student's psychiatrist Kristin Montalvo consulted on Student's case when he was at the Kaiser emergency room on January 15, 2018.²⁰ She had her first appointment with Student on February 26, 2018, and a follow-up appointment on March 28, 2018. Dr. Montalvo diagnosed Student with Major Depressive Disorder with psychotic features, with anxious stress; Obsessive Compulsive Disorder; and Autism Spectrum Disorder. Student

²⁰ Dr. Montalvo is a board certified psychiatrist and has held navy and civilian psychiatry positions for 11 years, most recently with Kaiser since August 2014.

was experiencing a loss of touch with reality, disorganized thoughts, and delusions. He was noticeably depressed, and heard and talked to voices. Student was frequently brought by ambulance to the emergency room on a 5150 hold initiated by law enforcement. He arrived anxious, agitated, violent and distressed, often hitting himself in the head when not restrained physically or chemically. At these times, Student required hospitalization but no hospital that contracts with Kaiser was willing to admit him due to his autism. Most recently, Student was in the emergency room on April 3 through 4, 2018. Dr. Montalvo determined he was in need of hospitalization due to his mental health presentation, but she was unable to find a hospital bed for him.

122. Student has been seen at Kaiser psychiatry department multiple times and has trialed multiple medications over the years, often with severe, adverse reactions including dystonia, agitation, insomnia, and dyskinesia. He has been prescribed antidepressants, anti-psychotics, benzodiazepines, and beta-blockers to treat his mental health symptoms. Currently, Student is taking Gabapentin and recently started Clomipramine. Dr. Montalvo was considering discontinuing Clomipramine given his recent, frequent trips to the emergency room. Parents have always been compliant with Student's psychiatrist's recommendations and willingly bring Student home when a hospital bed is not found.

123. Student's most pressing issue is stabilizing his mental health. Dr. Montalvo established that adjusting his medication to a therapeutic level is part of the stabilization process, and an important, supportive tool. His frequent trips to the emergency department, often in the middle of the night, indicate that he is in acute distress. In Dr. Montalvo's opinion, Student requires placement in a residential treatment center with a multi-disciplinary team of professionals, knowledgeable about autism, available at all times to safely manage his violent outbursts, and capable of helping Student reduce and prevent his behaviors. Parents are not equipped to safely maintain him at home. She persuasively explained that only when Student is safe will he be able to begin the work of

getting better and be able to participate in his treatment and education.

124. Student's constant agitation, violence, self-injury, crying and screaming, need for restraint, law enforcement involvement, 5150 holds and emergency room stays are all preventing him from accessing his education. Dr. Montalvo credibly opined, based on her training and experience, that given the severity of Student's outbursts, anything short of residential placement would not suffice. She had reviewed Student's records, was well-informed of his current presentation, familiar with residential treatment centers, and provided clear testimony that did not reach beyond her expertise and which was consistent with the opinions of Dr. Schiff. As such her opinions were entitled to substantial weight.

125. Student requires a mix of medical and therapeutic treatment to stabilize. This includes medication management as well as trained staff who know how to treat autism and mental health issues. Dr. Montalvo acknowledged that she does not know whether Student's behavior is related to his autism or to his mental health, or if they truly can be separately addressed; she does not believe any professional is able to determine this. At the time of her testimony on April 5, 2018, Student was in the emergency room. Dr. Montalvo established that if her other patients were presenting in the same state as Student was, they would be admitted to the hospital. Student's releases from the emergency room signify no more than that he had received a chemical restraint that made him calm enough in that moment to be managed on an outpatient basis. Dr. Montalvo persuasively established that Student will not get better unless he is placed residentially.

Services From Lifeworks

126. Mr. Olcese had been working with Student for approximately three months at the time of hearing. He has observed Student responding to internal stimuli, talking to individuals who are not real, and screaming out the name of someone who was not

present. He has seen Student hit his head with an open hand at home and once witnessed three staff restrain him at school. He agreed with Dr. Montalvo that determining whether Student's presentation and behaviors stem from mental health symptoms or are related to his autism may not be possible. Even so, Student's internal processes triggered his behaviors.

127. Mr. Olcese has never worked with a client with Student's profile, and he has no training or experience providing counseling services to an individual with autism. He is using cognitive behavioral techniques with Student including mindfulness and relaxation, as means to ground him in the moment. At times, Student appears to engage in counseling. Mr. Olcese is working on Student's social-emotional goal developed in January 2018, which requires Student to demonstrate the use of coping strategies in the counseling setting. Student has used some strategies when asked, but Student does not use coping skills prior to or during physical outbursts. Despite the recent services from LifeWorks, Student continues to engage in self-injurious behaviors at home and at school. When Mr. Olcese and other in-home providers leave, Parents try to keep Student engaged and grounded to keep him from retreating to his internal, distressing world.

Class Functioning and March 2018 Goal Progress Reports

128. Student met all four of his annual goals by March 29, 2018. However, these goals were developed in response to Student's work stoppage and disengagement period from December 2016 through April 2017. At that time, Student had no eye contact, was not following directions, and was virtually non-responsive, so his goals targeted lower level skills and were intended to reduce the demands placed on Student.

129. Pursuant to his communication goal, Student was participating in daily classroom social skills groups and had begun to attend the weekly vocational skills group the end of January 2018 and the weekly snack group in March 2018. Though Student was often present for the social groups, he still needed to work on participating. Although he

met his self-regulation goal as written, meaning he had engaged in a preferred activity before a work task over a course of four out of five opportunities, Student was inconsistently using sensory strategies. At the time of the March 2018 reporting, he was using preferred sensory tools at the rate of zero out of five trials. Student met his walking goal as evidenced by taking daily walks with staff on the fenced yard for at least 10 minutes, and he was participating in weekly walks to a local store. He met his goal of completing three assigned work tasks per work period with prompts, reinforcement, and the presentation of tasks that he could easily complete.

130. Student met his goal of demonstrating knowledge of more than 36 idioms, presented in a lower level format and carried over from April 2016. Ms. Franchetti was recently targeting Student's reading comprehension. Student had not met his prior eighth grade reading goal from April 2016, and it had been discontinued at the April 2017 IEP team meeting. Just prior to hearing, Ms. Franchetti had introduced Student to a ninth grade true story novel. She agrees with Dr. Mills that providing access to more age and grade appropriate material may spur his interest.

131. Mr. Goitein is a behavioral expert who spent a significant amount of time working with and learning about Student for many years. He was a sincere and humble witness who was knowledgeable about Student as well as his field of behavior analysis. As such his testimony was accorded great weight. He agreed that Student's behaviors had decreased in intensity, duration, and frequency since June 2017. However, it was his opinion that there had not been a sustained decrease given Student's spike in December 2017. He did not additionally note the spike of behaviors in September 2017 which further supports his opinion that Student has not demonstrated a sustained decrease in his target behaviors. Mr. Goitein established that given Student's cyclical behaviors and complex presentation, his decreased behaviors did not necessarily indicate progress, and could not be correlated to a particular intervention. By March 2018, Mr. Goitein adopted a new hypothesis that Student's behavior served an automatic function, meaning his

behavior was automatically reinforced by physical restraints which caused the release of endorphins which created a sense of euphoria or served to relieve internal pain. Because of the difficulty of finding a replacement behavior in the school setting for a rush of endorphins, his proposed interventions remained the same.

132. Ms. Ingels, Mr. Goitein, and Ms. Gogas all agreed that Lattice is, overall, implementing Dr. Henkel's recommendations as his proposed strategies are embedded within Student's behavior implementation plan and Lattice's program. Even so, Student continues to engage in self-injurious behaviors at school, and these behaviors have escalated at home. Mr. Lucas testified that the most important parts of Student's behavior plan are: (1) to increase his communication; (2) to ensure consistency throughout the day; and (3) to provide him with tasks that challenge him to learn but do not overwhelm him. The evidence showed that Lattice's program has not appropriately targeted these critical components.

MONARCH CENTER FOR AUTISM

133. Margaret Duhl, an intake specialist with Monarch since 2016, testified at hearing.²¹ Monarch is a residential treatment center for students with autism, and all staff have at least a bachelor's degree in a related field and receive specialized training in autism. There are three cottages, with 12 single bedrooms and one with 10, for a total residential population of 46 students. All students have autism and some are dually diagnosed with a mental health condition. The average length of stay is 18 months. Monarch runs two different school programs, an autism program and a program for students with an emotional disturbance. The total school population is 160 students. On

²¹ Ms. Duhl is licensed in Ohio as a professional clinical counselor, a registered art therapist, and is trained in trauma-focused cognitive behavioral therapy. She has worked in the mental health field for 10 years.

April 2, 2018, following an extensive intake process which included Ms. Duhl observing Student at Lattice and at home, Monarch accepted Student into its residential program and autism educational program which is a certified non-public school by the California Department of Education.

134. Monarch has two psychiatrists and nurses on staff, available around the clock. Board certified behavior analysts are on staff and also work overnight shifts. There are 15 behavior specialists at the school, and 7 assigned to the residential program. Monarch offers comprehensive milieu therapy and mental health services through its school psychologist and licensed therapists, as well as occupational therapy with its 20 credentialed therapists and speech and language services through its 23 speech pathologists. Around the clock consistency is one hallmark of Monarch's program, from the staff training and approach; the weekly multi-disciplinary team meetings to coordinate a student's program; to the structure of the cottages and the educational program. Communication is another. Monarch assesses each student to determine how they best convey and receive information, then determines the most appropriate method of communication unique to each student. Its teaching model incorporates visual communication such as a visual schedule.

135. On its 32 acre campus, there are two school buildings with approximately 20 classrooms. All teachers are fully credentialed special education teachers. There are six to eight students per class with four staff, including a teacher, two assistant teachers, and related service professionals. They run a full-day school program from 8:25 a.m. until 2:50 p.m. Monarch does not award grades but it works with a student's home district to ensure the student is completing the work required to earn a diploma, if the student has the ability to access that level of academics. Monarch has a transitional education program that teaches independent living skills and employability, and works with 20 local jobsites.

136. All staff are trained in the individual needs of the students they serve and are certified in therapeutic crisis management interventions. They receive an initial 24-

hour training program on de-escalation and hands-on physical restraint procedures, with a required annual 12-hour training to remain certified. A student is restrained only in situations of imminent harm to themselves or others. Staff injuries do happen but they are not typical.

137. Monarch intends to place Student in a cottage with peers of similar verbal, academic, and functional abilities. At Monarch, Student would attend either the high school class for grade-level curriculum access in a more traditional class instructional setting, or the "upper school" class for junior high to high school students who demonstrate some academic ability. There are both non-verbal and verbal students in the upper school. Adult students of similar age to Student attend Monarch.

138. Monarch will have an opening for Student no later than the beginning of the extended school year in June 2018. They will assess Student during his first 30 days, and create a treatment plan to meet his social and communication, medication, occupational therapy, mental health, behavioral, and academic needs. Monarch welcomes and frequently hosts visitors from students' home districts. Monarch's regular school year consists of 180 school days and its extended school year has 15 school days. The cost for Student to attend the school program is \$442 per day. The cost for the residential program is \$405 per day.

139. Student's estimated annual cost for attending Lattice and the costs for this current IEP services offer is approximately \$102,000 including extended school year. Santa Rosa did not introduce evidence of the costs of any other alternate program.

LEGAL CONCLUSIONS

INTRODUCTION: LEGAL FRAMEWORK UNDER THE IDEA²²

1. This due process hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 et seq. (2006);²³ Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: 1) to ensure that all students with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and to prepare them for further education, employment, and independent living; and 2) to ensure that the rights of students with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); 34 C.F.R. § 300.1; See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible student at no charge to the parent, meet state educational standards, and conform to the student's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a student with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed Code, § 56031, subd. (a).) "Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the student to benefit from special education. (20 U.S.C. § 1401(26); 34 C.F.R. §300.34; Ed. Code, § 56363, subd. (a).) In general, an IEP is a written statement for each student with a disability that is developed under the IDEA's procedures with the

²² Unless otherwise stated, the legal citations in this Introduction are incorporated by

²³ All subsequent references to the Code of Federal Regulations are to the 2006

participation of parents and school personnel that describes the student's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the student to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(a); Ed. Code, §§ 56032, 56345, subd. (a).)

3. In *Board of Education of Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a student receives access to an education that is reasonably calculated to "confer some educational benefit" upon the student. (*Id.* at pp. 200, 203-204.)

4. Recently, in *Endrew F. v. Douglas County School Dist. RE-1* (March 22, 2017) 580 U.S. ____ [137 S.Ct. 988] (*Endrew F.*), the Supreme Court clarified that "for a child fully integrated in the regular classroom, an IEP typically should, as *Rowley* put it, be 'reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.'" (*Id.* at p. 999, citing *Rowley, supra*, 458 U.S. 176, 203-04.) The Court then considered the meaning of the phrase "some educational benefit" for a student not being educated in the general education classroom. When a student is not able to achieve at grade level and progress through the regular curriculum, the student's educational program must be "appropriately ambitious in light of his circumstances ... as every child should have the chance to meet challenging objectives." (*Id.* at p. 1000.) The IDEA requires

“an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” (*Id.* at p. 1001.)

5. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387] (*Schaffer*); See 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA due process hearings is preponderance of the evidence].) In this matter, Student bears the burden of proof as to the issues for hearing.

SANTA ROSA’S FAILURE TO TIMELY AND ADEQUATELY ASSESS STUDENT’S EMOTIONAL DISTURBANCE

6. Student asserts that on and after January 26, 2017, Santa Rosa was on notice that his mental health and emotional functioning was negatively impacting his ability to access his educational program and was an area of suspected disability. Student contends that Santa Rosa was additionally on notice of a need to assess in response to Parents’ 2017 request for residential treatment. Student argues that Santa Rosa failed to timely refer him for an assessment of his mental health needs, and that its assessment in December 2017 was deficient in that it failed to identify his needs or make any recommendations beyond an eligibility determination. Student maintains these assessment failures denied him a FAPE.

7. Santa Rosa maintains that it had no duty to assess Student for an emotional disturbance because Student’s behaviors have always been a function of his diagnosis of

autism; Student was eligible for special education, and receiving services; and Parents never requested an assessment for emotional disturbance. Santa Rosa argues that following Parents' request for residential placement, it timely and adequately assessed Student in the area of emotional disturbance through Dr. Mills December 2017 assessment.

State Law on Transfers Between Selpa's

8. If a student has transferred to a new district from a district not within the new district's SELPA within the same academic year, the new district may implement special education and related services comparable to those in the existing IEP for no more than 30 days, by which time the district must either adopt the previously approved IEP, or develop, adopt, and implement a new IEP that is consistent with federal and state law. (Ed. Code,

9. Santa Rosa was initially responsible for identifying and meeting Student's special education needs beginning June 2015 until North Bay placed him at Turning Point shortly after his April 5, 2016 annual IEP team meeting. Ukiah then became responsible for Student's special education and related services. When Student returned home from Turning Point by January 24, 2017, Santa Rosa resumed responsibility for assessing and identifying Student's special education needs, and offering and providing him a FAPE. Because Student had been the responsibility of another district in a different SELPA prior to Santa Rosa's resumption of responsibility, Santa Rosa was accorded a 30-day period to determine Student's functioning and programming needs, ascertain if assessments were warranted, and decide whether it would adopt the IEP being implemented by Ukiah or develop a new IEP.

10. Thirty days after his return home, by February 22, 2017, Santa Rosa was expected to have familiarized itself with Student's current level of functioning and educational needs. Santa Rosa can reasonably be held accountable for knowing the

results of Ukiah's July 2016 triennial re-assessment contained within his education records, and Student's progress or lack thereof at Lattice from April 2016 through January 2017.

Assessments and Suspected Areas of Disability

11. In order to meet the continuing duty to develop and maintain an appropriate educational program, the school district must assess and reassess the educational needs of a student with a disability. (20 U.S.C. § 1414(a) & (b); 34 C.F.R. § 300.305; Ed. Code, §§ 56320, 56321.) A student's unique educational needs are to be broadly construed to include academic, social, health, emotional, communicative, physical, and vocational needs. (*Seattle School Dist., No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, citing H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106 abrogated in part on other grounds by *Schaffer, supra*, 546 U.S. 49, 56-58 (*Seattle*).) In addition, educational needs include functional performance. (Ed. Code, §§ 56320, subd. (b)(1), 56345, subd. (a)(1).) The district must ensure that the student is assessed in all areas of suspected disability. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4); Ed. Code, § 56320, subd. (f).) In California, the term "assessment" has the same meaning as the term "evaluation" in the IDEA. (Ed. Code, § 56302.5) These terms are used interchangeably in this Decision.

12. Students who may be eligible for special education "must be evaluated and assessed for all suspected disabilities so that the school district can begin the process of determining what special education and related services will address the child's individual needs." (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1110, cert. den. (Apr. 17, 2017, No. 16-672) 137 S.Ct. 1578[2017 WL 1366731] (*Timothy O.*).) A district is on notice of a suspected disability and required to assess in that area if a student has displayed symptoms of that disability. (*Id.* at p. 1119.)

13. Given the importance of assessments, the IDEA and accompanying regulations set forth an extensive set of procedural safeguards to ensure that evaluations

achieve “a complete result that can be reliably used to create an appropriate and individualized educational plan tailored to the needs of the child.” (*Timothy O., supra*, 822 F.3d 1105, 1110.) A district must, therefore, ensure that the evaluation is sufficiently comprehensive to identify all of the student’s needs for special education and related services, whether or not commonly linked to the identified disability category. (34 C.F.R. § 300.304(c)(6).)

14. A school district is required to use those assessment tools necessary to gather relevant functional and developmental information about the student to assist in determining the content of the student’s IEP. (34 C.F.R. § 300.304(b)(1)(ii).) The United States Department of Education attaches great importance on accurate, comprehensive evaluations as underscored by its regulation providing that parents who disagree with district evaluations may obtain an independent evaluation at public expense. (20 U.S.C. §1415(b)(1) & (d)(2); 34 C.F.R. § 300.502(b); Ed. Code, §§56506, subd. (b), 56329, subd. (b).) The failure to obtain critical assessment information about a student “render[s] the accomplishment of the IDEA’s goals -- and the achievement of a FAPE -- impossible.” (*N.B. v. Hellgate Elementary School Dist.* (9th Cir. 2008) 541 F.3d 1202, 1210 quoting *Amanda J. v. Clark County School Dist.* (9th Cir.2001) 267 F.3d 877, 894 (*Amanda J.*))

15. After a student has been deemed eligible for special education, a reassessment shall be conducted if the district determines that the educational or related services needs including functional performance of the student warrant a reassessment or if the parent or teacher requests reassessment. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).) The school district must provide the parent with a proposed assessment plan along with notice of the parent’s rights within 15 days of the referral for assessment, not counting vacations in excess of 5 school days. (Ed. Code, § 56321, subd. (a).) The assessment must be completed and an IEP team meeting held within 60 days of receiving consent, exclusive of school vacations in excess of five school days and other specified days. (20 U.S.C. § 1414(a)(1)(C); Ed. Code, §§ 56043, subds.

(c) & (f)(1), 56302.1, subd. (a), & 56344, subd. (a).)

16. A district's failure to conduct appropriate assessments or to assess in all areas of suspected disability constitutes a procedural violation that may result in a substantive denial of FAPE. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1032-1033 (*Park*); *Orange Unified School Dist. v. C.K.* (C.D.Cal., June 4, 2012, No. SACV 11-1253 JVS (MLGx)) 2012 WL 2478389, p.8.)

17. By all accounts, Student's presentation is complex and challenging. He was initially found eligible for special education as a student with autism when he was four years old. Under California law, autism does not apply if a student's educational performance is adversely affected primarily because of an emotional disturbance. (Cal. Code Regs., tit. 5, § 3030(b)(1)(A), effective July 1, 2014.) Santa Rosa, however, was on notice that Student was also presenting with signs of an emotional disturbance by February 2017.

18. Student had to be restrained three times over two consecutive days the week of January 23, 2017, because of his self-injurious and aggressive behaviors resulting in injuries to himself and staff. He had consecutively attended Lattice, a school that specializes in managing students with the most extreme behavioral needs, since June 2015. More than a year and a half later, on January 26, 2017, Santa Rosa determined that Student's behaviors continued to impede access to his educational programming and had escalated such that he required the added service of a one-to-one aide to keep him safe and engaged.

19. Despite providing Student intensive, one-to-one behavioral support services, Student's emotional dysregulation increased. At an escalating rate, and to an alarming intensity, student continued to display obsessive compulsive rituals, negative thought patterns and self-talk, and frequent self-injurious and aggressive behaviors accompanied by screaming, and crying. Student was continually striking himself in the head and face with a closed fist, bloodying and bruising himself, week after week, and

biting and hitting staff. Student was disengaged from learning and those around him. He frequently was seen responding to internal stimuli and visibly distressed by the voices he heard in his head. He was non-responsive, non-compliant, and socially isolated, refusing or unable to interact.

20. Lattice had to restrain Student during five separate incidents in February 2017, meaning his self-inflicted blows to the head had reached a level of imminent harm. Student's number of tantrums more than doubled from four in January 2017 to 10 in February 2017. Santa Rosa timely received Lattice's behavior emergency reports and is attributed Lattice's knowledge of Student's day-to-day behaviors. Within 30 days of his return home from Ukiah and reentry into Santa Rosa's jurisdiction, Santa Rosa was on notice that Student likely had needs in the area of mental health given his level of functioning and dysregulation, as well as in light of his psychiatric diagnoses and findings from past district assessments which highlighted the need to help Student quiet the voices in his head. By February 22, 2017, Santa Rosa should have determined that Student required an assessment in the area of emotional functioning, including his educationally related mental health needs.

21. Student's emotional functioning and mental health symptoms were impeding his education and warranted immediate assessment. While one can appreciate the challenge of determining whether Student's presentation was solely related to his autism or an emerging mental health condition, or both, Santa Rosa assumed the risk of attributing Student's presentation and injurious behaviors to his autism and believing that his autism-related educational needs could be met at Lattice without assessing if he had any emotional or mental health needs. Student met his burden of proving that Santa Rosa was required to refer him for an assessment in the area of emotional disturbance, including mental health needs, beginning February 22, 2017.

22. Santa Rosa was required to present Parents with an assessment plan within 15 days, on or before March 9, 2017, proposing to assess Student's emotional

functioning. Just as they readily consented to the November 2017 assessment plan, Parents likely would have provided immediate consent to an earlier assessment plan. Upon receiving Parents' consent to assess, Santa Rosa would have had 60 days, excluding breaks longer than five school days, to complete this assessment and present the results at an IEP team meeting by May 19, 2017. The regular school year did not end until June 2, 2017.

23. It was not until November 1, 2017, Santa Rosa presented Parents an assessment plan proposing, in part, to have a psychologist evaluate Student in the areas of social-emotional and behavior functioning to determine the level of supports he needed to address his mental health needs. Parents consented on November 3, 2017. Despite its assessment plan, Santa Rosa did not retain Dr. Mills to complete a full mental health services assessment, but asked that she only focus on eligibility questions as to whether Student had an intellectual disability or an emotional disturbance. Therefore, Dr. Mills completed what she termed a "limited eligibility assessment" and presented her results to the IEP team on January 12, 2018. In limiting Dr. Mills to only considering Student's eligibility for special education, Santa Rosa ignored its legal duty to ensure a comprehensive evaluation of Student's emotional and mental health needs. It also disregarded its own assessment plan, and thereby misled Parents. Dr. Mills did not assess Student's mental health or emotional needs, or determine how and where to best meet his needs to ensure he could access his education. Therefore, her assessment did not fulfill Santa Rosa's duty to appropriately assess and identify Student's emotional disturbance and related mental health needs.

24. Santa Rosa's failure to timely refer Student for an assessment of his emotional and mental health needs constitutes a procedural violation. The next inquiry is whether this violation denied Student a FAPE.

Analysis of Procedural Violations

25. Procedural flaws do not automatically result in a denial of a FAPE. (*W.G. v. Board of Trustees of Target Range School District No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484 superseded on other grounds by statute (*Target Range*)). A procedural violation of the IDEA results in a denial of a FAPE only if the violation: (1) impeded the student's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the student; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2); Ed. Code, § 56505, subd. (f)(2) & (j); *Target Range, supra*, 960 F.2d 1479, 1484; *L.M. v. Capistrano Unified School Dist.* (9th Cir. 2009) 556 F.3d 900, 910.)

26. The Ninth Circuit has held that a procedural error that causes a loss of an educational opportunity denies a student a FAPE. (*Doug. C. v. Hawaii Depart. of Education* (9th Cir. 2013) 720 F.3d 1038, 1047.) "A procedural error results in the denial of an educational opportunity where, absent the error, there is a 'strong likelihood' that alternative educational possibilities for the student 'would have been better considered.'" (*Id.* at p. 1047, quoting concurring opinion of Judge Gould in *M.L. v. Federal Way School Dist.* (9th Cir. 2005) 394 F.3d 634, 657.)

27. Special education law places a premium on parental participation in the IEP process. Parents must have the opportunity "to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.501(b); Ed. Code, § 56304; *Doug. C., supra*, 720 F.3d 1038, 1043["Parental participation ... is critical to the organization of the IDEA."]; *Amanda J., supra*, 267 F.3d 877, 892 ["Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA."].)

28. The purpose of an assessment is to identify a student's unique educational needs in a suspected area of disability and provide the IEP team with information as to

how to address these needs through educational programming, including supplemental supports, accommodations and modifications, goals, services, and placement. Without a comprehensive assessment of Student's emotional disturbance, neither Santa Rosa nor Parents could knowledgeably address whether Student required mental health services, including a residential placement, in order to access and benefit from his education. Having failed to identify Student's emotional and mental health needs, it was impossible for Santa Rosa to develop an appropriate educational program sufficiently tailored to his needs and appropriately ambitious in light of his circumstances.

29. Had Santa Rosa timely referred Student for assessment by February 22, 2017, it would have been required to review the results at an IEP team meeting by May 19, 2017. With timely, comprehensive assessment results, Student's IEP team would have likely discussed alternate programming for his 2017-2018 school year. Santa Rosa's procedural violation of failing to timely and appropriately assess Student's emotional disturbance substantially impeded Parents' participation in the decision-making process, resulted in a loss of educational opportunity, and denied Student a FAPE. Student is entitled to reimbursement of his private evaluation conducted by Dr. Schiff.

DELAY IN FINDING STUDENT ELIGIBLE UNDER CATEGORY OF EMOTIONAL DISTURBANCE

30. Student alleges that Santa Rosa's failure to timely find him eligible for special education and related services under the additional category of emotional disturbance was a further denial of FAPE. Santa Rosa contends that it is not the eligibility category that determines educational needs, and that it had identified and was addressing all of Student's education needs. Santa Rosa further asserts that Student's needs pursuant to his recently established emotional disturbance are virtually indistinguishable from his autism-related needs, which have driven his programming.

31. A student is eligible for special education and related services if he has a

qualifying disability, such as an emotional disturbance, and, as a result thereof, needs special education and related services that cannot be provided with modification of the regular school program. (20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.8(a)(1); Ed. Code, § 56026, subds. (a) & (b) [uses term "individual with exception needs"].) A student may qualify for special education benefits under more than one of the eligibility categories. (*E.M. v. Pajaro Valley Unified School Dist.* (9th Cir. 2014) 758 F.3d 1162, 1175-1176.)

Emotional Disturbance

32. A student's impairment constitutes an emotional disturbance when he exhibits one or more of the following characteristics over a long period of time, and to a marked degree, which adversely affects his educational performance: (a) an inability to learn which cannot be explained by intellectual, sensory, or health factors; (b) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; (c) inappropriate types of behavior or feelings under normal circumstances; (d) a general pervasive mood of unhappiness or depression; or (e) a tendency to develop physical symptoms of fears associated with personal or school problems. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(4)(A)-(E).)

33. An emotional disturbance includes schizophrenia. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(4)(F).) The law does not define what constitutes exhibiting the delineated symptoms for a "long period of time." An advice letter from the United States Department of Education states that a generally accepted definition of "a long period of time" is a range of time from two to nine months, assuming preliminary interventions have been implemented and proven ineffective during that period. (*Letter to Anonymous* (OSEP 1989) 213 IDELR 247.) This letter also states that the qualifier "to a marked degree" generally refers to the frequency, duration, or intensity of a student's emotionally disturbed behavior in comparison to the behavior of his peers and/or school and community norms. (*Ibid.*)

Autism

34. Autism is a developmental disability significantly affecting verbal and nonverbal communication and social interaction and adversely affecting a student's educational performance. (5 Cal. Code Regs., tit. 5, § 3030, subd. (b)(1) effective July 1, 2014.) Autism-related characteristics include engagement in repetitive activities and stereotyped movements, resistance to change, and unusual responses to sensory experiences. (*Ibid.*) Autism does not apply if a student's educational performance is adversely affected primarily because the child has an emotional disturbance. (5 Cal. Code Regs., tit. 5, § 3030, subd. (b)(1)(A).)

35. The IDEA does not require that a student be placed in the most accurate disability category. "Nothing in this chapter requires that children be classified by their disability so long as each child who has a disability listed in . . . this title and who, by reason of that disability, needs special education and related services, is regarded as a child with a disability . . ." (20 U.S.C. § 1412(a)(3)(B).) Thus, as interpreted by the Ninth Circuit, the IDEA "does not give a student the legal right to a proper disability classification." (*Weissburg v. Lancaster School Dist.* (9th Cir. 2010) 591 F.3d 1255, 1259.)

36. When a student is found eligible under any category, the analysis of whether he was denied a FAPE shifts to an examination of whether his IEP was tailored to meet his unique needs. As explained by the Seventh Circuit Court of Appeal,

The IDEA concerns itself not with labels, but with whether a student is receiving a [FAPE]. A disabled child's [IEP] must be tailored to the unique needs of that particular child The IDEA charges the school with developing an appropriate education, not with coming up with a proper label with which to describe [a student's] multiple disabilities. (*Heather S. v. State of Wisconsin* (7th Cir. 1997) 125 F.3d 1045, 1055.)

37. Dr. Mills determined through her December 2017 assessment of Student that he met the eligibility criteria for having an emotional disturbance. At the January 12, 2018 IEP team meeting, Santa Rosa agreed that Student required special education and related services due to his emotional disturbance, and proposed to add this as a secondary eligibility category. Student did not meet his burden of proving that Santa Rosa denied him a FAPE by failing to additionally identify him as eligible for special education pursuant to the category of emotional disturbance prior to January 2018. It is not the eligibility category that determines the substance of the IEP offer. Rather, Student's needs were supposed to be the driving force behind his IEP's. Having been eligible for special education and related services as a student with autism at the start of the statutory period, the analysis now shifts to determining the appropriateness of his educational programming.

SUBSTANTIVE VALIDITY OF THE APRIL 2017 IEP AND AMENDMENTS

Failure to Address Student's Emotional Disturbance Needs

38. Student asserts that Santa Rosa denied him a FAPE through the April 2017 IEP and subsequent amendments by failing to address his emotional disturbance symptoms, including auditory hallucinations, which drove his self-injurious and aggressive behaviors. Student alleges that the offers of counseling in the November 2017 and January 2018 IEP amendments were insufficient as Student required more intensive, around the clock mental health services tailored specifically to his autism-related weaknesses, and provided by qualified personnel.

39. Santa Rosa argues that Student could not access mental health services and did not require them to receive educational benefit. Santa Rosa maintains that Student's behaviors are manifestations of his autism and his behavioral placement and services are addressing his needs as evidenced by his progress on his goals.

EVALUATING THE IEP OFFER

40. The Ninth Circuit has held that a district's decisions in writing an IEP cannot be judged exclusively in hindsight, since "an IEP is a snapshot, not a retrospective." (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*)). An IEP for a student with a disability is measured as of the time that it was created. (*Ibid.*) This evaluation standard is known as the "snapshot rule." (*Ibid.*; *J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 439.) In reviewing the sufficiency of an IEP's offer of FAPE, the snapshot rule looks at what is reasonable given the information available to the team at the time. (*Ibid.*; *J.G. v. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786, 801.)

AFTER ACQUIRED EVIDENCE

41. While Santa Rosa's actions "cannot be judged exclusively in hindsight," (*Adams, supra*, 195 F.3d 1141, 1149), the Ninth Circuit has observed that after-acquired evidence may shed light on the objective reasonableness of a school district's actions at the time the school district rendered its decision. (*E.M. v. Pajaro Valley Unified School Dist.* (9th Cir. 2011) 652 F.3d 999, 1006.) The Ninth Circuit held that, in reviewing a district's actions, courts may look to evidence not known to the decision makers at the time as "additional data, discovered late in the evaluation process, may provide significant insight into the child's condition, and the reasonableness of the school district's action, at the earlier date." (*Ibid.*) Similarly, in upholding a child find violation and determination of eligibility pursuant to emotional disturbance, the *Jana K.* court concluded,

These types of proceedings are necessitated upon the finding that the school district failed to timely discover a subsequently diagnosed disability. While hindsight can seldom be used in law to impute to a party something it should have known, here it is precisely the device used to adequately assess the

student's needs and the school district's obligations at the relevant time. (*Jana K. v. Annville-Cleona School Dist.* (M.D. Penn. 2014) 39 F.Supp.3d 584, 601- 602.)

42. Based on the above, it is appropriate to consider Dr. Mills assessment, as well as Santa Rosa's subsequent eligibility finding in January 2018 in determining the reasonableness of not offering mental health services to Student in his April 2017 IEP. Through her December 2017 assessment, Dr. Mills determined that Student was experiencing numerous mental health symptoms, including school-related fears and anxiety; depressive features; and inappropriate behaviors and feelings such as spontaneous laughing and talking to himself, and difficulty distinguishing between fantasy and reality. Student had experienced these symptoms for a long period of time, to a marked degree. He had been under a considerable amount of stress that not only exacerbated his symptoms of autism, but also his symptoms of depression. In adding emotional disturbance as a secondary eligibility category in January 2018, Santa Rosa acknowledged that Student's qualifying emotional challenges, in addition to his autism characteristics, were negatively impacting his ability to access his education, and had been for a long period of time and to a marked degree. Santa Rosa failed to develop an IEP that addressed Student's emotional disturbance.

REQUIREMENT THAT IEP ADDRESS STUDENT'S UNIQUE NEEDS

43. The IEP must target all of a student's unique educational needs, whether academic or non-academic. (*Lenn v. Portland School Committee* (1st Cir. 1993) 998 F.2d 1083, 1089; See *Seattle, supra*, 82 F.3d 1493, 1500 [includes academic, social, health, emotional, communicative, physical and vocational needs.]) This includes needs related to psychotropic medication and treatment if these adversely impact a student's academic, behavioral, and social performance. (See *L.J. v. Pittsburg Unified School District* (9th Cir. 2017) 850 F.3d 996, 1008 (*L.J.*)) A school district is required to provide educational

instruction, specially designed to meet the unique needs of a student with a disability, supported by such services as are necessary to permit the student to benefit from the instruction. (*Rowley, supra*, 458 U.S. 176, 188-189; *County of San Diego v. California Special Educ. Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1468 (*San Diego*).)

RELATED SERVICES

44. Related services include psychological services, recreation, including therapeutic recreation, social work services, counseling, including rehabilitation counseling, and medical services for diagnostic and evaluation purposes only, as may be required to assist a student with a disability to benefit from special education. (20 U.S.C. §1401(26)(A); 34 C.F.R. § 300.34(a) [related services also include parent counseling and training].) State law adopts this definition of related services. (Ed. Code, § 56363, subd. (a) & (b).) An educational agency satisfies the FAPE standard by providing adequate related services such that the student can take advantage of educational opportunities and achieve the goals of his IEP. (*Park, supra*, 464 F.3d 1025, 1033.) An IEP that does not appropriately address behaviors that impede a student's learning denies a student a FAPE. (*Neosho R-V School Dist. v. Clark* (8th Cir. 2003) 315 F.3d 1022, 1028-1029.)

45. The responsible educational agency, including Santa Rosa in the instant case, is charged with assessing a student with special needs who is suspected of needing related services, such as mental health services, to benefit from his education. (Gov. Code, § 7572, subd. (a).) Further, the local agency is statutorily required to provide related services that a student needs in order to receive a FAPE. (Gov. Code, § 7573.)

46. As determined above, Santa Rosa failed to timely and appropriately assess Student's mental health and emotional functioning. Therefore, it did not identify his needs in these critical areas. At the time of the April 2017 IEP team meeting, Santa Rosa was aware that Student was demonstrating increased emotional and behavioral dysregulation at home and at school. Parents had informed Lattice that Student's psychotropic

medications were not successfully addressing his anxiety which was driving his self-injurious and aggressive behaviors. Student's medication trials resulted in insomnia which fueled his dysregulation. His anxiety, as demonstrated by obsessive-compulsive rituals, had increased. His tantrums escalated and he was regularly injuring himself and requiring restraints. Student's tantrums often started with him yelling, "Stop that right now! Okay, I will!"

47. Student's number of tantrums and isolated incidents of self-injurious behaviors climbed in March 2017. Student continued to spiral downward through April 2017 as captured in the behavioral data and eight behavior emergency reports documenting full restraints. His dangerous behaviors reach a new level of intensity with a documented 46 incidents of self-injurious behaviors at school in April 2017. His injuries included blood clots, facial swelling with his eyes swollen shut, nose swelling necessitating medical evaluation, and hearing loss due to repeated self-inflicted blows to the head and ears. Student could not be kept safe at Lattice; its behavior management approach was not working. Santa Rosa's expert Dr. Mills acknowledged that not all of Student's behaviors can be explained by his autism.

48. Further, as discussed during the April 4, 2017 IEP team meeting, Student's school functioning and academic performance regressed. Student was showing signs of depression; he had lost interest in things he used to enjoy, and was virtually non-responsive at school. Between his December 2016 goal progress reports and April 2017, Student made no progress on his goals due to his complete disengagement and work stoppage. Student's presentation and functioning demonstrated his need for mental health services. Santa Rosa's contention that Student did not require counseling as demonstrated by his progress on his goals is not persuasive as it overlooks the fact that the goals it developed for Student did not address a critical area of need, namely his mental health.

49. Mr. Goitein recommended a new behavior approach of withdrawing all

demands. Rather than adding mental health supports or services to address his mental health needs which were impeding his ability to access his program, Santa Rosa proposed an IEP with less ambitious goals, targeting lower level skills, and that reflected Lattice's behavioral approach. As such, Santa Rosa's position that Student was receiving educational benefit because he was progressing on his goals is disingenuous. Despite the new behavioral approach, Student's self-injurious behaviors soared in May 2017 to 45 separate incidents. By April 2017, it was clear that Lattice's sole focus on behavior management was not meeting Student's needs.

50. Given his complex profile, the periods of Student's relative improvement could not be attributed to any particular behavior intervention or goal, nor reasonably be construed as educational progress. Further, Student had not demonstrated a significant period of sustained improvement as evidenced by the behavior data showing increased behaviors February through April 2017, a dramatic spike in May 2017, with additional spikes in September and December 2017. Parents and school had tried many different behavioral techniques which seemed to help at times, but then Student's mental health symptoms emerged and disrupted Student's ability to access his programming.

51. As such, Santa Rosa's November 2017 and January 2018 offers of in-home behavior intervention services did not address Student's need for mental health services. Whether Student hit himself to self-punish, or in response to hallucinations, or to express fear and anxiety, all theories pointed to a need for intensive mental health services. Santa Rosa's claim that Student did not need counseling because he could not benefit from it was not supported. Although Parents signed releases of information on September 25, 2017, Santa Rosa did not consult with any of Student's Kaiser or North Bay private service providers who had provided various cognitive therapeutic techniques with some success. Parents informed the IEP team in November 2017 that Student was participating in and benefiting from counseling services through Kaiser which helped him organize his thoughts and express his feelings in writing.

52. Through its November 2017 counseling offer, Santa Rosa acknowledged that Student required mental health services. Its contracted provider, Mr. Olcese, confirmed Student's on-going need for mental health services based on his internal process that triggers his behaviors. While Mr. Olcese was able, at times, to engage Student in counseling sessions, he does not have any training or experience providing mental health services to an individual with autism. Santa Rosa's November 1, 2017 offer of temporary counseling services for 75 minutes per week, and its January 2018 offer to extend this offer of counseling to an annual service, were not sufficient to meet Student's needs. Student required specialized counseling by a provider experienced in providing counseling to an individual with autism and serious mental health disorders, as well as residential placement to make beneficial use of counseling services as discussed below.

53. Student met his burden of proof that Santa Rosa's April 2017 IEP offer, as amended, failed to address Student's emotional disturbance that was preventing his ability to access his education and make educational progress. Santa Rosa's failure to offer appropriate mental health services denied Student a FAPE from April 2017 through the 2017-2018 school year. Student is entitled to a compensatory remedy as detailed below.

Failure to Address Student's Academic Needs

54. Student contends that Santa Rosa's failure to offer him access to academics at his level of ability has denied him a FAPE. Santa Rosa counters that Student is not capable of achieving a high school diploma and that Lattice appropriately provides him a functional academic program that focuses on his transition needs. Santa Rosa also argues that Lattice is providing Student access to ninth grade reading and recently offered a ninth grade math goal.

ACCESS TO GENERAL EDUCATION CURRICULUM

55. The federal regulations place great emphasis on ensuring that students with disabilities have access to the general education curriculum. Specially designed

instruction is defined as adapting the content, methodology, or delivery of instruction to address the unique needs of the student with a disability and to ensure access to the general curriculum so he can meet the applicable state educational standards that apply to all students equally. (34 C.F.R. § 300.39(b)(3).) Further, a student's IEP must include a statement of how his disability affects his involvement and progress in the general education curriculum; annual goals designed to enable the student to be involved in and make progress in the general education curriculum; and a statement of the special education and related services the student will receive, and any necessary program modifications or supports that will be provided, to enable the student to be involved in and make progress in the general education curriculum. (34 C.F.R. § 300.320(a)(1),(2)(i) and (4).)

CONTINUED ELIGIBILITY THROUGH AGE 22

56. Under California law, a student with a disability who has not completed the prescribed course of study, met proficiency standards, or graduated from high school with a regular high school diploma is eligible to receive special education service through the age of 22. (Ed. Code, § 56026, subd. (c)(4)(A).)

GRADUATION PLANS: DIPLOMA OR CERTIFICATE OF COMPLETION

57. The issue of whether an individual with exceptional needs will receive a regular high school diploma when he graduates from high school is not addressed by the IDEA. (*Letter to Anonymous* (OSEP 1994) 22 IDELR 456.) Nor does the IDEA establish standards for graduation as a general matter. (See *Letter to Richards*, (OSEP 1990) 17 IDELR 288.) The establishment of appropriate, substantive standards for graduation is entirely a matter of state law for students with and without disabilities. (See *Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities* 71 Fed. Reg. 46577 (Aug. 2006); *Letter to Anonymous, supra*.)

58. When an individual with exceptional needs is not capable of meeting the

requirements for a diploma, he may be placed on a track which leads to a certificate of completion. However, it is not the intent of the Legislature to eliminate the opportunity for an individual with exceptional needs to earn a standard diploma issued by a local or state educational agency when the student has completed the prescribed course of study and has passed proficiency requirements with or without differential standards. (Ed. Code, § 56392.)

59. This case is not about whether Student's graduation plan should remain a certificate of completion or return to a diploma track. Nor is Student's present ability to obtain a diploma at issue. The question is whether Santa Rosa denied Student a FAPE by failing to offer placement and services that would provide him access to a diploma-track curriculum, meaning appropriately ambitious, high school academics with required supports.

60. Santa Rosa treated Student as a behaviorally disordered student whose violent episodes of self-harm and aggression stemmed solely from his autism. Even though it acknowledged his emotional disturbance in January 2018, rather than have Dr. Mills assess Student's related emotional and mental health needs, Santa Rosa turned all its attention to adopting and seeking consent to implement Dr. Henkel's "new" behavior intervention plan.

61. Because of its myopic view of Student through only a behavior lens, Santa Rosa continued to offer Lattice as the only educational placement for him. Lattice focused and specialized in behavior management. Given this view of Student, his academic ability was disregarded. Lattice could not provide Student access to a diploma-track curriculum as it was only certified by the California Department of Education to provide a functional skills program, and it did not have qualified teaching staff to instruct Student at the higher secondary level. Professionals working with Student, including his teacher, did not have concerns with his learning abilities and knew he was capable of higher-level academics than Lattice was offering. Mr. Lucas' testimony that he found it "eye-opening"

that Student could fluently read aloud paragraphs, work on antonyms and synonyms, quickly solve math equations, and type with some speed was both genuine and unsettling.

62. Both Dr. Schiff and Dr. Mills agreed that Student should have access to a high school curriculum. In fact, a more challenging curriculum would serve to increase his self-worth and combat his depressive symptoms. While access to higher-level academics could result in increased anxiety, especially given his history of fears of academic failure and school refusal in ninth grade, both assessors agreed, to varying degrees of certainty, that Student could succeed with higher-level academic work and obtain a general education degree if his mental health needs were appropriately addressed.

63. Santa Rosa's claim that Student was unable to access a diploma-track curriculum because of his inability to attend to work tasks was not persuasive. Providing emotional supports would additionally address Student's difficulties attending to task. It was undisputed that Student's internal reality distracted him and also distressed him, resulting in behavioral outbursts, both of which prevented him from attending to task. Providing Student with appropriate mental health supports would enable him to access a high school curriculum commensurate with his cognitive abilities. Such access aligns with the United States Supreme Court's recent clarification in *Endrew F.* that an educational program must be appropriately ambitious in light of a student's individual circumstances.

64. Santa Rosa's claim that Student did not require diploma-level academics as evidenced by the fact that he was making progress on, and had met all of his April 2017 annual goals was equally unpersuasive. His only academic goal was an idiom goal carried over and pared down from April 2016. Meeting goals that were intentionally reduced to eliminate demands and stress and which targeted lower level skills is not evidence of educational benefit.

65. Santa Rosa's further argument that Student needed to focus on his independent living skills because he is a transition-aged student who is unlikely to be able

to live independently was equally unpersuasive. This argument overlooks the impact of Student's mental health on his educational program. Student had completely disengaged from learning. Just as it is a disservice to try to point to one behavior intervention as being instrumental in Student's recent re-engagement, it is equally a disservice to conclude that Student's functioning level, in the absence of required mental health services, necessitated that he be relegated to sorting and folding tasks, and walking laps. Student has been transition-aged for three years. He is entitled to a program that keeps him safe and provides him necessary mental health services, so he can access not only appropriate transition goals, but also the general education high school curriculum.

66. Student has not returned to his 2015 level of academic achievement. At the end of March 2018, Ms. Franchetti began to work with Student in reading a ninth grade novel. In January 2018, Lattice recently obtained a ninth-grade level on-line math course for Student and Santa Rosa offered a related math curriculum access goal. However, these recent actions do not offer Student the chance to access the challenging academic program he is entitled to. Student met his burden of proof that Santa Rosa's April 2017 IEP, as amended, denied him a FAPE from April 2017 through the 2017-2018 school year, by failing to offer Student a placement and services that provided him with diploma-track level curriculum. Student is entitled to a compensatory remedy as detailed below.

STUDENT REQUIRES RESIDENTIAL PLACEMENT

67. Student contends that Lattice is not an appropriate placement in that it is unable to appropriately address his behaviors; and does not offer necessary mental health interventions, an appropriate peer group, or access to a diploma curriculum. Student asserts that he requires placement at a residential treatment center in order to be kept safe and receive necessary services targeting his needs related to his dually diagnosed disabilities of autism and emotional disturbance, in order for him to receive educational benefit. Student maintains that Monarch is able to meet his educational needs.

68. Santa Rosa contends that Student is receiving educational benefit at Lattice as evidenced by his progress on his goals, and, therefore, it is the least restrictive environment for him. Santa Rosa argues Lattice is able to manage Student's behaviors, and the fact that Parents cannot keep themselves or Student safe is a home problem not a school issue. Santa Rosa asserts it is not responsible for funding Student's preferred residential placement, as his request is based on medical needs, specifically medication management, and family convenience, rather than educational needs.

Measuring Educational Benefit

69. There is no one test for measuring the adequacy of educational benefits conferred under an IEP. (*Rowley, supra*, 458 U.S. 176, 202.) "The IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement." (*Endrew F., supra*, 137 S.Ct. 988, 999.); *Rowley, supra*, 458 U.S. 176, 179.) A student derives benefit when he improves in some areas even though he fails to improve in others. (See *Fort Zumwalt School Dist. v. Clynes* (8th Cir. 1997) 119 F.3d 607, 613; *Carlisle Area School v. Scott P.* (3rd Cir. 1995) 62 F.3d 520, 530.) A student's failure to perform at grade level is not necessarily indicative of a denial of a FAPE, as long as the student is making progress commensurate with his abilities. (*Walczak v. Florida Union Free School District* (2d Cir. 1998) 142 F.3d 119, 131; *E.S. v. Independent School Dist., No. 196* (8th Cir. 1998) 135 F.3d 566, 569.) However, a district may not discharge its duty under the IDEA by providing a program that "produces some minimal academic advancement no matter how trivial." (*Amanda J., supra*, 267 F.3d 877, 890 citing *Hall v. Vance County Bd. of Educ.* (4th Cir. 1985) 774 F.2d 629, 636.)

70. Student is correct that his situation is factually similar to the circumstances present in the case of *Endrew F.* On remand, the district court held that Endrew's IEP was deficient as his educational and functional progress was minimal at best; the IEP carried over past goals from prior deficient IEP's, and abandoned other goals that could not be

met. Further, Endrew's minimal progress was impacted by the district's failure to provide a program that could address his behaviors which were preventing him from meeting his goals. (*Endrew F. v. Douglas County School District RE 1* (D. Colo. 2018) 290 F.Supp.3d 1175, 1184.)

71. At the time of his April 2017 IEP team meeting, Student had not met any of his prior annual goals. In fact, his academic achievement and functional performance had regressed. His April 2017 IEP carried over some goals but these were pared back and targeted lower level skills. In this case, Student's progress on goals that had been adjusted downward did not equate to educational benefit. Santa Rosa's April 2017 IEP goals reflected its focus on eliminating demands. Reducing Student's stress, while consistent with the subsequently refuted hypotheses that his behaviors served the function of escape and avoidance, is not the same thing as ensuring educational benefit. He was offered the same behavioral program and the same level of services even though he continued to strike himself again and again in the face and head often in response to internal stimuli, and continued to react aggressively and injure staff. An educational program that aims so low is tantamount to "sitting idly ... awaiting the time when they were old enough to 'drop out.'" (*Rowley, supra*, 458 U.S., 176, 179.)

72. The Ninth Circuit instructs that, "[T]he correct standard for measuring educational benefit under the IDEA is not merely whether the placement is 'reasonably calculated to provide the child with educational benefits,' but rather, whether the child makes progress toward the goals set forth in her IEP." (*San Diego, supra*, 93 F.3d 1458, 1467.)

73. Santa Rosa's position that Student received educational benefit under his IEP while at Lattice, as evidenced by his progress on his goals, overlooks the first requirement to ensure that a placement is reasonably calculated to produce benefit. Santa Rosa's April 2017 IEP offer of program and placement was not reasonably calculated to confer benefit as it had failed to assess and identify all of Student's needs in

terms of his emotional disturbance and his academics. Lattice was unable to address Student's academic or mental health needs. It did not provide an appropriate opportunity for Student to socialize with peers at his cognitive and functional level. Most telling, Lattice's behavioral program had been unable to keep Student from battering himself, or to even determine the functions of his behaviors, so that it could help Student learn replacement behaviors.

Least Restrictive Environment

74. To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate that students with disabilities are educated with students who do not have disabilities. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, §§§ 56033.5, 56040.1; 34 C.F.R. 300.114 (a); see *Sacramento City Unified School Dist., Board of Educ. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 [adopting a four-part test to determine whether general education appropriate] (*Rachel H.*.) When, as here, the student cannot be educated in a general education environment, the least restrictive environment analysis requires determining whether the student has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1050.)

75. By all accounts, Student is a complex young man with a challenging, dual diagnosis of autism and emotional disturbance; compounded by a serious mental health condition of major depressive disorder with psychotic features. He additionally presents with severe, adverse reactions to many prescribed psychotropic medications, and displays severe self-injurious behaviors that present as a unique form of self-punishment. These are his unique circumstances that must be taken into account when determining the least restrictive educational setting in which he will be able to receive educational benefit. It does not matter whether the trigger for Student's behaviors is his autism or his depression or an emerging psychotic break, his symptoms are interfering with his ability

to access his education.

Residential Placement

76. Therapeutic residential placements may be related services that must be provided if they are necessary for the student to benefit from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.104; Ed. Code, § 56363, subd. (a).) The district's responsibility under the IDEA is to remedy the learning related symptoms of a disability, not to treat other, non-learning related symptoms. (*Forest Grove School District v. T.A.* (9th Cir. 2011) 638 F.3d 1234, 1238-39 [no abuse of discretion in denying parent reimbursement where district court found parent sought residential placement for student's drug abuse and behavior problems unrelated to school difficulties].)

77. The Ninth Circuit has addressed the issue of residential placement in several cases with factual similarities to Student's situation. In *Clovis Unified School Dist. v. California Office of Administrative Hearings* (9th Cir. 1990) 903 F.2d 635 (*Clovis*), the Ninth Circuit distinguished a residential placement that was for medical purposes from one that was for educational purposes. In *Clovis*, the parties agreed that the student needed a residential placement, but disputed whether the psychiatric hospital constituted "related services" or a "residential placement" that the district must fund. The Ninth Circuit held that, to determine whether a student's residential placement was an educationally related placement that is the responsibility of the school district, the "analysis must focus on whether [the student's] placement may be considered necessary for educational purposes, or whether the placement is a response to medical, social or emotional problems that is necessary quite apart from the learning process." (*Id.* at p. 643.) In *Clovis*, the Ninth Circuit held that the student's psychiatric hospitalization was for medical rather than for educational reasons, and therefore not the responsibility of the district.

78. Six years later, in *San Diego*, the Ninth Circuit referenced its ruling in the *Clovis* case, as having identified "three possible tests for determining when to impose

responsibility for residential placements on the special education system: (1) where the placement is 'supportive' of the pupil's education; (2) where medical, social or emotional problems that require residential placement are intertwined with educational problems; and (3) when the placement is primarily to aid the student to benefit from special education." (*San Diego, supra*, 93 F.3d 1458, 1468.) In *San Diego*, a student with an emotional disturbance was hospitalized for violent outbursts at home related to school work. Upon her release, the district reduced her homework given her resultant stress, and placed her in a day treatment program to address her therapeutic needs. The student refused to participate in her therapy program, engaged in tantrums at home, and attacked family members. The Ninth Circuit affirmed the district court's determination that the student had satisfied all three tests such that the school district was responsible for costs of her unilateral residential treatment. (*Ibid.*)

79. In the case of *Seattle*, the student was found eligible for special education under the category of serious emotional disturbance after the district had expelled her for assaultive behaviors and after she had been hospitalized at a psychiatric facility. The district offered a specialized self-contained behavioral classroom with counseling services. Student's parents disagreed and obtained an independent educational evaluation that recommended a residential treatment center as student required intensive, round-the-clock care, in order to address her behavioral disabilities and enable her to benefit from her education. The Ninth Circuit affirmed the district court decision finding an out-of-state residential treatment center was the least restrictive environment for the student, who did not derive any meaningful educational benefit from a district school, despite obtaining appropriate scores on standardized tests. The Ninth Circuit reiterated that "unique educational benefit" means more than academic achievement. (*Seattle, supra*, 82 F.3d 1493, 1500.) "The IDEA does not require [student] to spend years in an educational environment likely to be inadequate and to impede her progress simply to permit the School District to try every option short of residential placement." (*Id.* at p. 1501.)

80. A district is not responsible for the costs of a residential placement when parents place the student primarily for medical not educational reasons and based on problems at home. (*E.H.*, *supra*, 587 F. 3d 1175, 1185.) Similarly, in *Ashland School Dist. v. Parents of Student R.J.* (9th Cir. 2009) 588 F.3d 1004, the Ninth Circuit upheld the district court's ruling finding a residential treatment center was not necessary for the student to receive educational benefit as her risky behaviors occurred outside of the school setting and that the placement "stemmed from issues apart from the learning process, which manifested themselves away from school grounds." (*Id.* at p. 1010.)

81. Student requires a comprehensive, residential treatment program for educational purposes and his request for placement meets all three of the tests as described by the Ninth Circuit in *San Diego*. Residential placement is supportive of Student's education as it will provide the consistency that all professionals agree he requires across the home and school environment; the structure and safety to allow him to understand, differentiate, and take control of the distressing voices in his head; and a professional team to develop a therapeutic intervention plan, including a medication regimen, that quiets his internal world and combats his insomnia to enable him to attend to learning.

82. Residential placement is educationally required because Student's mental health needs including depression, psychotic features, anxiety, and obsessive compulsive rituals; his continuing self-injurious and aggressive behaviors; his social and emotional needs; and his need for psychotropic medication are all inextricably intertwined and inseparable from his ability to learn. Having educational needs associated with a psychotropic medication regimen should not be discounted as falling under a medical exclusion to the provision of special education services. (See *L.J.*, *supra*, 850 F.3d 996, 1007-1008 [Ninth Circuit remanded case after finding student eligible for special education as a student with an emotional disturbance, and faulting district for failing to conduct a health assessment and to discuss student's ongoing needs associated with his

medication].) In fact, *L.J.* instructs that Santa Rosa should be discussing the impact of Student's medication needs on his educational placement. Student's self-injurious behaviors at home are the same behaviors he displays at school; just as Parents are unable to safely manage his behaviors at home, the staff at Lattice and at his after-school program are equally struggling as evidenced by Student and staff injuries. Student's need for residential placement is integrally related to the learning process. Dr. Mills summed it up best when she concluded, "emotional challenges are most probably the factor that most affects his academic performance as he is unavailable for learning when he is despondent, self-injurious, or lost in his own fantasy life and world of self-deprecation."

83. Finally, residential placement is primarily to aid Student to benefit from his education. Although Parents are hopeful that medications will be of greater utility to Student if he is in a setting where trained professionals can respond to any adverse emotional or behavioral reactions, they are not seeking a residential placement primarily for the purposes of medication management. Parents have watched their son's academic performance decline from a ninth grade level in the 2014-2015 school year, to hearing educators three years later tell them about his ability to sort colored pegs, fold laundry and walk laps on the fenced blacktop. Parents have always sought, and continue to seek, a placement that will aid Student to recapture and display his true academic abilities. Student has spent three academic years at Lattice. Throughout this time, Lattice has not been able to effectively and safely address his behaviors which prevent him from accessing his education program. In accord with the reasoning of the Ninth Circuit in *Seattle*, Student should not be required to waste any additional time in a placement not suited to meet his needs, just so Santa Rosa can try out one more behavior intervention plan.

84. Dr. Mills agreed that Student required residential placement. However, she disagreed that he required it for educational purposes. Her opinion was not persuasive as it was based on her misperception that Student must be benefiting educationally as he

was making progress on his goals. Not only was Student not receiving educational benefit as determined above, he continued to come home bloodied, battered, and bruised from his self-injurious behavior, despite Lattice's defensive blocking attempts. This became the norm; Lattice staff expected to be injured by their students; Parents became numb. Self-harm is a critical factor in determining Student's need for residential placement. Lattice cannot keep Student from injuring himself. Parents cannot keep Student safe at home due to his increased size and the intensity of his outbursts. Student is in acute distress as evidenced by his increasing number of emergency room visits. This cycle of chaos is not conducive to allowing him to access his education. If Student does not have his basic needs for sleep and safety met, he cannot access his higher level needs for learning and social interaction.

85. Santa Rosa's retention of Dr. Henkel to perform a functional behavior assessment of Student's home, and develop a behavior intervention plan for Parents to implement at home, is a tacit admission that Student requires a residential placement to ensure continuity of behavioral strategies across environments. Dr. Henkel disagreed with residential placement as he believed Student needed a different approach at home to be able to effectuate his own behavioral change. His opinion that in order for Student to change his behaviors, he requires consistency across environments, and a different home approach with a home escort service and behavior specialist to train Parents in implementing a home behavior intervention plan, further supports Student's need for a residential placement.

86. Based on the above analysis, Student met his burden of proving that he requires a residential placement to meet his educational needs and receive educational benefit. Monarch is an appropriate residential treatment center capable of addressing Student's unique educational needs. Monarch's certification as a non-public school substantially supports the conclusion that it is an appropriate educational placement. (See Ed. Code, § 56505.2, subd. (b).) Cost is a relevant factor in determining the least restrictive

environment. (*Rachel H., supra*, 14 F.3d 1398, 1404.) In determining that Monarch is an appropriate placement for Student, its associated costs have been carefully considered. An IEP placement at Monarch additionally incorporates an award for compensatory educational services to which Student is entitled given Santa Rosa's denial of FAPE for the 2017-2018 school year.

FAILURE TO PROVIDE TIMELY PRIOR WRITTEN NOTICE OF DENIAL OF RESIDENTIAL PLACEMENT

87. Student contends that Santa Rosa failed to provide him with timely prior written notice of its denial of his September 2017 request for residential placement. Santa Rosa asserts that it provided prior written notice in a reasonable amount of time in response to Parents' request for residential placement given the circumstances of this case. Santa Rosa contends that Student's January 22, 2018 IEP met the requirements of prior written notice despite the delay of four months, and that on February 16, 2018, it provided Parents a formal prior written notice.

88. Having found a substantive violation for the time period at issue, specifically Santa Rosa's failure to offer and provide Student a residential placement, no determination is required as to the alleged procedural violation of failing to provide proper prior written notice. Therefore, this issue is not decided, as this Decision awards Student a remedy for the substantive violation.

REMEDIES

1. As a remedy for Santa Rosa's failure to timely and adequately assess his emotional disturbance, Student seeks reimbursement for Dr. Schiff's neuro-psychological evaluation. As a remedy for Santa Rosa's failure to offer him a FAPE through its April 2017 IEP as amended, Student seeks placement at Monarch Academy through his IEP, including related services and escorted transportation to place Student, as well as ongoing family visits.

2. ALJs have broad latitude to fashion appropriate equitable remedies for the denial of a FAPE. (*School Committee of Burlington v. Department of Educ.* (1985) 471 U.S. 359 at pp. 370, 374 [105 S.Ct. 1996, 85 L.Ed.2d 385]; *Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*).) In remedying a FAPE denial, the student is entitled to relief that is “appropriate” in light of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3); *Puyallup, supra*, 31 F.3d 1489, 1497.) School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Puyallup, supra*, 31 F.3d 1489, 1496.) These are equitable remedies that courts may employ to craft “appropriate relief” for a party. (*Id.* at 1497.)

3. As equitable relief, an ALJ may also place a student in a non-public school certified by the California Department of Education under Section 56366.1. (Ed. Code, § 56505.2; see also 34 C.F.R. § 300.104; *Seattle, supra*, 82 F.3d at pp. 1498, 1501-1502.) The cost of a placement is a proper factor to consider when weighing the appropriateness of a placement. (*Rachel H., supra*, 14 F.3d 1398, 1404; See *Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, 16 [114 S.Ct. 361, 366, 126 L.Ed.2d 284] [total reimbursement for private school not appropriate if the cost of the private education is unreasonable]; *Ashland School District v. E.H.* (9th Cir. 2009) 587 F. 3d 1175, 1184 (*E.H.*) [appropriate to consider cost where services are not educational].)

4. An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student’s needs. (*Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” (*Ibid.*)

5. Student requires placement at a residential treatment center that specializes in treating students with autism in order to receive educational benefit. Student additionally requires a residential treatment center that provides the following: a

behavioral program administered by board certified behavior analysts; mental health services by licensed clinicians experienced in treating individuals with autism; specialized academic instruction by properly credentialed special education teachers, delivered in small classes with high staff to student ratios, with access to a diploma-track curriculum; occupational therapy and speech and language services as specified in his IEP by qualified providers; access to peers of similar age, cognition, and abilities; transitional services; and family counseling or parent training. Therefore, to compensate for Santa Rosa's failure to provide Student a FAPE for the 2017-2018 school year, and as prospective relief based on Student's current need for residential placement, Santa Rosa shall amend Student's IEP to include residential placement.

6. Monarch is an appropriate residential treatment center for Student as it specializes in serving students with autism and is able to provide him all of the components specified above. It is determined herein that the cost of placement at Monarch is reasonable given the facts of this case and Student's entitlement to compensation for Santa Rosa's failure to offer and provide him with appropriate placement and services to address his mental health and academic needs during the entirety of the 2017-2018 school year, which also prevented Student from accessing and benefiting from his transition services. Therefore, Santa Rosa will be required to place Student at Monarch. If Monarch is unavailable or unwilling to serve Student, Student's IEP team will need to identify and offer a residential treatment center comparable to Monarch with the components specified herein.

7. Student requires safe transport to his new residential placement. Santa Rosa will be required to fund safe transportation for Student to travel to his residential placement, in consultation with residential treatment staff, and to include trained escorts as recommended by the treatment center. Santa Rosa shall also be required to fund travel costs for Student to participate in up to four home visits per year. Student's IEP shall be further amended to include family visits, for Parents to visit Student at his residential

treatment center and to participate in family counseling services, for up to four visits per year; the number of visits to be determined by the treatment center.

8. Because of Santa Rosa's failure to timely and appropriately assess Student's emotional disturbance and mental health needs, Student is entitled to reimbursement of \$5,500.00 for Dr. Schiff's evaluation.

ORDER

1. Within five business days of this Order, Santa Rosa shall amend Student's IEP to include residential placement. Santa Rosa shall further amend Student's IEP to include a provision that Santa Rosa will fund reasonable roundtrip transportation costs for Student's home visits as recommended by the residential placement, for up to four trips per year; and a provision for up to four family visits per year as determined by the residential treatment center, while Student remains residentially placed. Specifically, Santa Rosa shall reimburse Parents the reasonable costs of transportation, including airfare, reasonable hotel costs of up to three nights per trip, reasonable rental car or taxi costs, and state rate per diem, for up to a maximum of four visits per year as determined by the residential treatment center, for family visits, family counseling, or parent training.

2. Santa Rosa shall place Student at Monarch on or before the start of its extended school year in June 2018.

3. If Monarch determines it is unable to serve Student, Santa Rosa shall convene an IEP team meeting to identify a comparable residential treatment center. Santa Rosa shall place Student at a comparable residential treatment center specializing in serving students with autism, and which is staffed with board certified behavior analysts and licensed counselors, and fully credentialed special education teachers qualified to instruct Student at his academic level. The residential treatment center shall additionally provide access to a diploma-track curriculum; small class size and high staff-to-student ratios; transition services, occupational therapy and speech services; parent training and

family counseling services; and a peer group of students of similar age, cognition, and ability as that of Student.

4. Santa Rosa shall ensure Student's safe transportation to his residential placement, in consultation with his placement staff, and shall fund the roundtrip costs of trained escorts (up to four) as determined necessary by the residential treatment center.

5. Within 45 days of this Order, Santa Rosa shall reimburse Parents the sum of \$5,500 for the costs of Student's private assessment by Dr. Schiff.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Student prevailed as to first part of Issue 1 and Issue 3 in its entirety. Santa Rosa prevailed as to the second part of Issue 1. This Decision did not determine Issue 2.

RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATE: May 25, 2018

_____/s/_____
THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings